



Business Regulation Committee

**Thursday, March 9, 2006
2:00 PM - 3:00 PM
REED HALL**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Business Regulation Committee

Start Date and Time: Thursday, March 09, 2006 02:00 pm

End Date and Time: Thursday, March 09, 2006 03:00 pm

Location: Reed Hall (102 HOB)

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 321 Drawings by Chance by Harrell

HB 651 Secondhand Dealers by Kottkamp

HB 835 Affordable Housing by Attkisson

HB 867 Impact Of Slot Machine Gaming by Gottlieb

NOTICE FINALIZED on 03/07/2006 15:47 by REFFITT.NIKKI

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 321

Drawings by Chance

SPONSOR(S): Harrell

TIED BILLS: None

IDEN./SIM. BILLS: SB 540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	_____	Morris <i>Jan</i>	Liepshutz <i>MM</i>
2) <u>Governmental Operations Committee</u>	_____	_____	_____
3) <u>Finance & Tax Committee</u>	_____	_____	_____
4) <u>Commerce Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Legislature passed s. 849.0935, F.S., in 1984 as an exception to the general prohibition against conducting a lottery. That statute allows charitable and nonprofit organizations that are exempt from federal income taxation pursuant to 26 U.S.C., section 501(c) (3), (4), (7), (8), (10) or (19) to conduct drawings by chance [raffles].

This bill amends the list of qualifying organizations that may conduct raffles to include chambers of commerce qualified as tax exempt under 26 U.S.C. s. 501(c) (6) of the Internal Revenue Code.

The bill will have no fiscal impact on state revenue collections or expenditures.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

The conduct of gambling is controlled by the Florida Constitution and general law.¹ Article X, Section 7 of the Florida Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law on the effective date of the constitutional revision.² Section 849.09, F.S., prohibits the conduct and promotion of lotteries; drawings by chance are lotteries.

Drawings by Chance

The Legislature passed s. 849.0935, F.S., in 1984 as an exception to the general prohibition against conducting a lottery. Section 849.0935, F.S., provides the rules for conducting drawings by chance [raffles] and allows charitable and nonprofit organizations that are exempt from federal income taxation pursuant to 26 U.S.C., section 501(c) (3), (4), (7), (8), (10) or (19) to conduct drawings by chance providing the organization has complied with all applicable provisions of Chapter 496, Florida Statutes, the Solicitation of Contributions Act. There is no state agency responsible for enforcement of the drawings by chance statute and statutory interpretation and enforcement are left to local law enforcement agencies.

A key feature of this authorization is that no donation or other payment can be required as a condition of participating in the drawing for the prize. The organization may suggest, but not require, a minimum donation per raffle ticket and the organization must provide a ticket free of any charge if an entrant makes such a request.

Organizations allowed to conduct charitable drawings by virtue of their tax exempt status include, but are not limited to, 501(c):

- (3) corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes;
- (4) civic leagues or organizations operated exclusively for the promotion of social welfare; employee associations;
- (7) clubs organized for pleasure or recreation;
- (8) fraternal beneficiary societies, orders, or associations operating under a lodge system providing insurance benefits;
- (10) domestic fraternal societies, orders, or associations operating under a lodge system devoted to religious, charitable, scientific, literary, educational, and fraternal purposes which do not provide insurance benefits; and
- (19) posts or organizations of past or present members of the Armed Forces.³

This list of organizations allowed to conduct charitable drawings pursuant to s. 849.0935, F.S., does not include chambers of commerce which have tax exempt status under s. 501(c) (6) of the Internal Revenue Code.

¹ See Chapters 24, 550, 551 and 849, F.S., and Art. X, sections 7, 15, and 23, Florida Constitution.

² *Greater Loretta Improvement Association v. Boone*, 234 So.2d 665 1970; pari-mutuel activities [horse and dog racing, jai ali games and bingo] were recognized as lotteries but if in existence and lawful under case law or legislative statutes prior to January 7, 1969, were grandfathered in as exceptions to the lottery prohibition.

³ See 26 U.S.C. 501(c)(3), (4), (7), (8), (10), and (19)

26 U.S.C. 501(c) (6) lists the following organizations as tax exempt:

Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

A violation of s. 849.0935, F.S., is a deceptive and unfair trade practice and a second degree misdemeanor.

Effect of Proposed Changes:

The bill amends the list of qualifying organizations that may conduct raffles to include chambers of commerce qualified as tax exempt under 26 U.S.C. s. 501(c) (6) of the Internal Revenue Code. The bill does not include other organizations which have tax exempt status under that section.

C. SECTION DIRECTORY:

Section 1. Amends s. 849.0935 (1) and (2), F.S., to allow chambers of commerce that are tax exempt under s. 501(c)(6) to conduct raffles.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to drawings by chance; amending s. 849.0935, F.S.; revising a definition of the term "organization" to include chambers of commerce exempt from federal income taxation; including qualified chambers of commerce within a limitation against construing application of certain lottery prohibition provisions to prohibit certain organizations from conducting drawings by chance; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) and subsection (2) of section 849.0935, Florida Statutes, are amended to read:

849.0935 Charitable, nonprofit organizations; drawings by chance; required disclosures; unlawful acts and practices; penalties.--

(1) As used in this section, the term:

(b) "Organization" means an organization which is exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), or a chamber of commerce which is exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(6), and which has a current determination letter from the Internal Revenue Service, and its bona fide members or officers.

(2) The provisions of s. 849.09 shall not be construed to prohibit an organization qualified under 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), or a chamber of commerce qualified under 26 U.S.C. s. 501(c)(6), from conducting drawings by chance

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29 | pursuant to the authority granted by this section, provided the
30 | organization has complied with all applicable provisions of
31 | chapter 496.

32 | Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Secondhand Dealers
SPONSOR(S): Kottkamp and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) Business Regulation Committee		Livingston <i>[Signature]</i>	Liepshutz <i>[Signature]</i>
3) Governmental Operations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Pawnbrokers were formerly regulated as secondhand dealers but are now separately regulated under ch. 539, F.S.

This bill adopts some of the regulatory restrictions currently applicable to pawnbrokers, making them applicable to secondhand dealers. Changes include:

- Revising definitions of what constitutes secondhand goods and exempting persons.
- Repealing the exemption from regulation for mail order sales.
- Specifically exempting certain internet business from regulation as a secondhand dealer.
- Revising the recordkeeping requirements and increases criminal penalties.
- Increasing time law enforcement can order hold on stolen goods.

This bill does not appear to have a fiscal impact on state or local governments, although it is likely to have a negative fiscal impact on secondhand dealers.

Provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases regulation of secondhand dealers.

Ensure lower taxes -- This bill includes under the penalty provisions goods consigned or traded and increases the criminal penalties to a felony of the third degree if the value of the money received is less than \$300; if greater than \$300 it is a second degree felony.

B. EFFECT OF PROPOSED CHANGES:

A secondhand dealer is a person who is in the business of purchasing, consigning, or trading certain types of previously owned or used personal property. Regulation of secondhand dealers is pursuant to ch. 538, F.S. The registration requirements are administered by the Department of Revenue. Initial registration as a secondhand dealer is \$6.00 per location, plus \$47.00 for each principal to conduct a criminal history background check. Annual renewal is \$6.00 per location.

Prior to 1996, pawnbrokers were also regulated by ch. 538, F.S., but pawnbrokers are now regulated pursuant to ch. 539, F.S.

This bill deletes references to pawnbrokers from ch. 538, F.S., and, in general, increases of the regulation of secondhand dealers to be similar to the regulation of pawnbrokers.

Items Regulated

Section 538.03(1)(g), F.S., currently defines "secondhand goods". That definition is limited to a list of specified items. This bill removes the current list and defines secondhand goods as personal property previously owned or used, which is not regulated metals property otherwise regulated and which is purchased, consigned, or traded as used property and lists goods that are specifically excluded to include: office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

Mail Order Sales/Internet Sales

Section 538.03(2), F.S., currently list entities and types of sales that are exempt from regulation pursuant to ch. 538, F.S. Included in the list of exemptions is the sale of secondhand goods by mail order, including internet sales.¹

This bill deletes the exemption, thereby providing that a person in the business of purchasing or consigning secondhand goods through the mail, or through computer services, is subject to regulation as a secondhand goods dealer under ch. 538, F.S. However, this bill adds an exception for a business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an internet website, and that maintains a shop, store, or other business premises for this purpose if:

- The secondhand goods are available for viewing on the website at no charge;
- The records of the sale, purchase, consignment, or trade are maintained for 2 years;

¹ Specifically, the exemption deleted is for: "Any person purchasing, consigning, or pawning secondhand goods ordered by mail, computer-assisted shopping, media-assisted, media-facilitated, or media-solicited shopping or shopping by other means of media communication, including, but not limited to, direct mail advertising, unsolicited distribution of catalogs, television, radio, or other electronic media, telephone, magazine, or newspaper advertising, so long as such person is in this state at the time of the order."

- The records of the sale, purchase, consignment, or trade contain the serial number of each item, if any;
- The secondhand goods are searchable by state or zip code on the website;
- The name under which it conducts business on the website is provided to the appropriate law enforcement agency;
- The business allows the appropriate law enforcement agency to inspect its premises any time during normal business hours;
- Any payment for sale, purchase, consignment, or trade must be made by check or via a money transmitter licensed under part II of chapter 560; and
 - At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business verifies the item is not stolen via its serial number against the FDLE stolen property database; or
 - The business provides the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods within 24 hours after entering into the contract unless other arrangements are made between the business and law enforcement.

This bill also exempts any person offering his or her own personal property for sale, purchase, consignment, or trade via an internet website when that person is not required to have a local occupational or business license for this purpose.

This bill also exempts a business whose primary business is the sale, rental, or trade of motion picture videos or video games if the business:

- Requires the sellers to have a current account with the business;
- Has on file the name, address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
- Purchases secondhand goods from the property owner or representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states the seller is the lawful owner;
- Retains such purchase agreements for at least 1 year; and
- Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or authorized user of seller's account.

Recordkeeping Requirements

Section 538.04, F.S., currently requires a secondhand dealer to maintain records of all goods purchased, and requires that a copy of each purchase record be forwarded to local law enforcement within 24 hours of purchase. The form for providing that information must be approved the Florida Department of Law Enforcement. Section 538.06(4), F.S., currently requires a secondhand dealer to keep the forms for 5 years.

This bill increases the amount of information that must be obtained on the form to match the information that a pawnbroker must collect. The increased information includes a requirement that the person selling or consigning goods to the secondhand dealer must furnish a thumbprint. The retention time for the forms is reduced from 5 years to 3 years and forms must be maintained at the licensed premises for the first year. This bill also provides that, if local law enforcement provides the software and the equipment, the dealer must transmit the information electronically. These provisions are identical to current pawn shop regulation under ch. 539, F.S.

Criminal Penalties

Section 538.04(4), F.S., currently provides that it is a criminal offense for any person to knowingly give false verification of ownership or to give false or altered identification, and who receives money from a secondhand dealer for goods sold. If the value of the money received is less than \$300, it is a first degree misdemeanor; if greater than \$300, it is a third degree felony.

This bill includes under the penalty provisions goods consigned or traded and increases the criminal penalties to a felony of the third degree if the value of the money received is less than \$300; if greater than \$300 it is a second degree felony. These penalties are analogous with the statute applicable to pawnbrokers.²

The felony criminal offenses in s. 538.04(4), F.S., are not classified in the offense severity ranking chart of the Criminal Punishment Code. Accordingly, the amended third degree felony will be a Level 1 offense, and the second degree felony will be a Level 4 offense.³

Section 538.07(2), F.S., currently provides that, upon a conviction for theft, violation of the secondhand dealer law, or dealing in stolen property, a court must order the defendant to make restitution to the secondhand dealer. This bill provides that restitution must be made to the secondhand dealer or to the lawful owner of the property, as applicable.

Inspection by Law Enforcement

Currently, the registered premises of a secondhand dealer, including the purchase records, may be inspected by the police department, if the premises is located in a municipality, or the sheriff, if located outside a municipality, during regular business hours.

This bill specifies that the "entire" registered premises is open to inspection, and provides that any law enforcement officer with jurisdiction over the registered premises may inspect the premises. Thus, this bill provides that county sheriffs may inspect secondhand dealers located anywhere in their county.

Minimum Holding Period

Section 538.06(1), F.S., provides that a secondhand dealer must hold property 15 days before re-selling the property, unless the person who sold the property to the dealer buys it back. Chapter 539, F.S., requires a pawnbroker to hold property 30 days before offering the property for sale to the public.

Law Enforcement Hold

Section 538.06(3), F.S., currently provides that a law enforcement officer may extend the hold period for 60 days if the law enforcement officer has probable cause to believe the property is stolen.

This bill amends the law enforcement hold period for secondhand dealers to 90 days. This bill also provides that, if a 90 day hold is in effect, the secondhand dealer may be compelled to surrender property believed to be stolen property to local law enforcement for use in a criminal proceeding. The criminal court may order the property returned to the person from whom it was stolen, in which case the thief must pay restitution, including attorney's fees and costs, to the secondhand dealer. This provision is identical to one currently applicable to pawnbrokers.⁴

Registration as a Secondhand Dealer

² See section 539.001(8)(b) .8.a and .b, F.S.

³ Section 921.0023, F.S.

⁴ Section 539.001(16)(e)2., F.S.

Section 538.09(5), F.S., currently provides the requirements for registration as a secondhand goods dealer. Included is a requirement that a principal in the business may not have been convicted of, or entered a plea of guilty or no contest to a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of section 812.015, or any fraudulent dealing, within the previous 5 years.

This bill changes the time period from the previous 5 years to the previous 10 years, and adds that "adjudication withheld" for any of the enumerated offenses will also disqualifying a person from being a principal in a business acting as a secondhand dealer.⁵

This bill also amends section 538.09, F.S., to add, upon the request of a law enforcement official, the Department of Revenue shall release the name and address of any secondhand dealer registered to do business within the official's jurisdiction.

The effective date of this bill is October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 538.03, F.S., regarding the definitions applicable to ch. 538, F.S.

Section 2 amends s. 538.04, F.S., regarding the recordkeeping requirements to provide criminal penalties.

Section 3 amends s. 538.05, F.S., regarding provisions relating to the inspection or records and premises.

Section 4 amends s. 538.06, F.S., regarding how long a secondhand goods dealer must hold stolen goods.

Section 5 amends s. 538.07, F.S., regarding restitution from a secondhand dealer.

Section 6 amends s. 538.09, F.S., regarding registration as a secondhand goods dealer.

Section 7 repeals s. 538.16, F.S., regarding disposal of pawned property.

Section 8 amends s. 516.02, F.S., to remove cross-references.

Section 9 reenacts s. 790.335 (3)(f), F.S., regarding firearm records to provide criminal penalties.

Section 10 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

⁵ Pawnbroker registration also has a 10 year restriction, and counts offenses for which adjudication was withheld. Pawnbroker law, however, has additional disqualifying offenses. See section 539.001(4)(a)4., F.S.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have a direct negative fiscal impact on businesses that deal in secondhand goods and are not exempt from the regulation. They will be required to hold merchandise longer before selling it, which is likely to increase storage costs and floor plan interest costs. They will also have increased transactional and recordkeeping costs related to the increased amount of information required for the secondhand transaction form.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled

2 An act relating to secondhand dealers; amending s. 538.03,
3 F.S.; revising definitions; revising applicability of ch.
4 538, F.S.; exempting persons or entities offering
5 secondhand goods or personal property for sale, purchase,
6 consignment, or trade via the Internet from the provisions
7 of ch. 538, F.S., under certain circumstances; exempting
8 certain businesses that sell, rent, or trade motion
9 picture videos or video games from ch. 538, F.S.; amending
10 s. 538.04, F.S.; revising recordkeeping requirements for
11 secondhand dealers; providing penalties for knowingly
12 giving false verification of ownership or a false or
13 altered identification, and for receiving money from a
14 secondhand dealer for goods sold, consigned, or traded if
15 the value of the money received is less than \$300, and if
16 the value of the money received is \$300 or more; providing
17 for the electronic transfer of secondhand dealer
18 transactions under specified circumstances; authorizing
19 appropriate law enforcement agencies to provide a
20 secondhand dealer with a computer and other equipment
21 necessary to electronically transfer secondhand dealer
22 transactions; providing procedures with respect to
23 electronic transfer of secondhand dealer transactions;
24 amending s. 538.05, F.S.; revising provisions relating to
25 the inspection of records and premises of secondhand
26 dealers; amending s. 538.06, F.S.; revising provisions
27 with respect to the holding of goods upon probable cause
28 that the goods are stolen; providing for payment of

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restitution, attorney's fees, and costs to a secondhand dealer under specified circumstances; revising the time limit for maintenance of transaction records by dealers in secondhand property; amending s. 538.07, F.S.; revising provisions relating to restitution for stolen property recovered from a secondhand dealer; amending s. 538.09, F.S.; revising provisions with respect to registration as a secondhand dealer; revising conditions under which registration may be denied, revoked, restricted, or suspended by the Department of Revenue; repealing s. 538.16, F.S., relating to disposal of property by secondhand dealers; amending s. 516.02, F.S.; removing cross-references; reenacting s. 790.335(3)(f), F.S., which provides a second degree felony penalty for any secondhand dealer who contracts with a specified third-party provider or electronically transmits certain records of firearms transactions to any third-party provider; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 538.03, Florida Statutes, is amended to read:

538.03 Definitions; applicability.--

(1) As used in this part, the term:

(a) "Secondhand dealer" means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the

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57 business of purchasing, consigning, or trading pawning
58 secondhand goods. However, ~~secondhand dealers are not limited to~~
59 ~~dealing only in items defined as secondhand goods in paragraph~~
60 ~~(g). Except as provided in subsection (2), the term means~~
61 ~~pawnbrokers, jewelers, precious metals dealers, garage sale~~
62 ~~operators, secondhand stores, and consignment shops.~~

63 (b) "Precious metals dealer" means a secondhand dealer who
64 normally or regularly engages in the business of buying used
65 precious metals for resale. The term does not include those
66 persons involved in the bulk sale of precious metals from one
67 secondhand or precious metals dealer to another.

68 ~~(c) "Pawnbroker" means any person, corporation, or other~~
69 ~~business organization or entity which is regularly engaged in~~
70 ~~the business of making pawns but does not include a financial~~
71 ~~institution as defined in s. 655.005 or any person who regularly~~
72 ~~loans money or any other thing of value on stocks, bonds, or~~
73 ~~other securities.~~

74 ~~(d) "Pawn" means either of the following transactions:~~

75 1. ~~Loan of money. A written or oral bailment of personal~~
76 ~~property as security for an engagement or debt, redeemable on~~
77 ~~certain terms and with the implied power of sale on default.~~

78 2. ~~Buy sell agreement. An agreement whereby a purchaser~~
79 ~~agrees to hold property for a specified period of time to allow~~
80 ~~the seller the exclusive right to repurchase the property. A~~
81 ~~buy sell agreement is not a loan of money.~~

82 ~~(c)-(e)~~ "Secondhand store" means the place or premises at
83 which a secondhand dealer is registered to conduct business as a
84 secondhand dealer, or conducts business, ~~including pawn shops.~~

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(d)~~(f)~~ "Consignment shop" means a shop engaging in the business of accepting for sale, on consignment, secondhand goods which, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party.

(e) "Acquire" means to obtain by purchase, consignment, or trade.

(f)~~(g)~~ "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded pawned as used property. Such secondhand goods shall not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, and secondhand sports equipment that is not permanently labeled with a serial number.

For purposes of this paragraph, "secondhand sports equipment"

does not include golf clubs. be limited to watches, diamonds,

gems, and other precious stones, fishing rods, reels, and

tackle, audio and video electronic equipment, including

television sets, compact disc players, radios, amplifiers,

receivers, turntables, tape recorders, video tape recorders,

speakers and citizens' band radios; computer equipment; radar

detectors; depth finders; trolling motors; outboard motors;

sterling silver flatware and serving pieces; photographic

equipment, including cameras, video and film cameras, lenses,

electronic flashes, tripods, and developing equipment; microwave

ovens; animal fur coats; marine equipment; video games and

cartridges; power lawn and landscape equipment; office equipment

such as copiers, fax machines, and postage machines but

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~~excluding furniture, sports equipment, golf clubs, weapons, including knives, swords, and air guns, telephones, including cellular and portable, firearms, tools, calculators, musical instruments, excluding pianos and organs, lawnmowers, bicycles, typewriters, motor vehicles, gold, silver, platinum, and other precious metals excluding coins, and jewelry, excluding costume jewelry.~~

(g)~~(h)~~ "Transaction" means any purchase, consignment, or trade pawn of secondhand goods by a secondhand dealer.

(h)~~(i)~~ "Precious metals" means any item containing any gold, silver, or platinum, or any combination thereof, excluding:

~~1. any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.~~

~~2. Any coin with an intrinsic value less than its numismatic value.~~

~~3. Any gold bullion coin.~~

~~4. Any gold, silver, or platinum bullion that has been assayed and is properly marked as to its weight and fineness.~~

~~5. Any coin which is mounted in a jewelry setting.~~

(i)~~(j)~~ "Department" means the Department of Revenue.

~~(k) "Pledge" means pawn or buy sell agreement.~~

(2) This chapter does not apply to:

(a) Any secondhand goods transaction involving an organization or entity registered with the state as a nonprofit, religious, or charitable organization or any school-sponsored association or organization other than a secondary metals recycler subject to the provisions of part II.

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(b) A law enforcement officer acting in an official capacity.

(c) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondhand dealer.

(d) Any public official acting under judicial process or authority who has presented proof of such status to the secondhand dealer.

(e) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondhand dealer.

(f) Any garage sale operator who holds garage sales less than 10 weekends per year.

(g) Any person at antique, coin, or collectible shows or sales.

(h) Any person who sells household personal property as an agent for the property owner or their representative pursuant to a written agreement at that person's residence.

(i) The purchase, consignment, or trade ~~pawn~~ of secondhand goods from one secondhand dealer to another secondhand dealer when the selling secondhand dealer has complied with the requirements of this chapter.

(j) Any person accepting a secondhand good as a trade-in for a similar item of greater value.

(k) Any person purchasing, consigning, or trading ~~pawning~~ secondhand goods at a flea market regardless of whether at a temporary or permanent business location at the flea market.

(l) Any auction business as defined in s. 468.382(1).

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(m) Any business that is registered with the Department of Revenue for sales tax purposes as an antique dealer pursuant to chapter 212 and that purchases secondhand goods from the property owner or her or his representative at the property owner's residence pursuant to a written agreement that states the name, address, and telephone number of the property owner and the type of property purchased.

(n) A business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an Internet website, and that maintains a shop, store, or other business premises for this purpose, if all of the following apply:

1. The secondhand goods must be available on the website for viewing by the general public at no charge;

2. The records of the sale, purchase, consignment, or trade must be maintained for at least 2 years;

3. The records of the sale, purchase, consignment, or trade, and the description of the secondhand goods as listed on the website, must contain the serial number of each item, if any;

4. The secondhand goods listed on the website must be searchable based upon the state or zip code;

5. The business must provide the appropriate law enforcement agency with the name or names under which it conducts business on the website;

6. The business must allow the appropriate law enforcement agency to inspect its business premises at any time during normal business hours;

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197 7. Any payment by the business resulting from such a sale,
198 purchase, consignment, or trade must be made to the person or
199 entity with whom the business contracted to offer the goods and
200 must be made by check or via a money transmitter licensed under
201 part II of chapter 560; and

202 8.a. At least 48 hours after the estimated time of
203 contracting to offer the secondhand goods, the business must
204 verify that any item having a serial number is not stolen
205 property by entering the serial number of the item into the
206 Department of Law Enforcement's stolen article database located
207 at the Florida Crime Information Center's public access system
208 website. The business shall record the date and time of such
209 verification on the contract covering the goods. If such
210 verification reveals that an item is stolen property, the
211 business shall immediately remove the item from any website on
212 which it is being offered and notify the appropriate law
213 enforcement agency; or

214 b. The business must provide the appropriate law
215 enforcement agency with an electronic copy of the name, address,
216 phone number, driver's license number, and issuing state of the
217 person with whom the business contracted to offer the goods, as
218 well as an accurate description of the goods, including make,
219 model, serial number, and any other unique identifying marks,
220 numbers, names, or letters that may be on an item, in a format
221 agreed upon by the business and the appropriate law enforcement
222 agency. This information must be provided to the appropriate law
223 enforcement agency within 24 hours after entering into the
224 contract unless other arrangements are made between the business

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225 and the law enforcement agency. ~~Any person purchasing,~~
226 ~~consigning, or pawning secondhand goods ordered by mail,~~
227 ~~computer-assisted shopping, media-assisted, media facilitated,~~
228 ~~or media-solicited shopping or shopping by other means of media~~
229 ~~communication, including, but not limited to, direct mail~~
230 ~~advertising, unsolicited distribution of catalogs, television,~~
231 ~~radio, or other electronic media, telephone, magazine, or~~
232 ~~newspaper advertising, so long as such person is in this state~~
233 ~~at the time of the order.~~

234 (o) Any person offering his or her own personal property
235 for sale, purchase, consignment, or trade via an Internet
236 website, or a person or entity offering the personal property of
237 others for sale, purchase, consignment, or trade via an Internet
238 website, when that person or entity does not have, and is not
239 required to have, a local occupational or business license for
240 this purpose.

241 (p) A business whose primary business is the sale, rental,
242 or trade of motion picture videos or video games, if the
243 business:

244 1. Requires the sellers of secondhand goods to have a
245 current account with the business;

246 2. Has on file in a readily accessible format the name,
247 current residential address, home and work telephone numbers,
248 government-issued identification number, place of employment,
249 date of birth, gender, and right thumbprint of each seller of
250 secondhand goods;

251 3. Purchases secondhand goods from the property owner or
252 his or her representative at the place of business pursuant to

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an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states that the seller is the lawful owner of the property;

4. Retains such purchase agreements for not less than 1 year; and

5. Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or another authorized user of the seller's account with that business.

~~(q)(e)~~ A motor vehicle dealer as defined in s. 320.27.

(3) This part does not apply to secondary metals recyclers regulated under part II, except for s. 538.11, which applies to both secondhand dealers and secondary metals recyclers.

Section 2. Section 538.04, Florida Statutes, is amended to read:

538.04 Recordkeeping requirements; penalties.--

(1) Secondhand dealers shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for a period of no less than 3 years. ~~Secondhand dealers shall maintain records of all transactions of secondhand goods on the premises. Unless other arrangements have been agreed upon by the secondhand dealer and the appropriate law enforcement agency, the secondhand dealer shall, within 24 hours after of the~~

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281 acquisition of any secondhand goods, ~~by purchase or pledge as~~
 282 ~~security for a loan, a secondhand dealer shall~~ deliver to the
 283 police department of the municipality where the goods were
 284 acquired ~~purchased~~ or, if the goods were acquired ~~purchased~~
 285 outside of a municipality, to the sheriff's department of the
 286 county where the goods were acquired ~~purchased~~, a record of the
 287 transaction on a form approved by the Department of Law
 288 Enforcement. Such record shall contain:

289 (a) The time, date, and place of the transaction.
 290 (b) A complete and accurate description of the goods
 291 acquired, including the following information, if applicable:
 292 ~~any serial numbers, manufacturer's numbers, or other identifying~~
 293 ~~marks or characteristics.~~

- 294 1. Brand name.
- 295 2. Model number.
- 296 3. Manufacturer's serial number.
- 297 4. Size.
- 298 5. Color, as apparent to the untrained eye.
- 299 6. Precious metal type, weight, and content, if known.
- 300 7. Gemstone description, including the number of stones,
 301 if applicable.
- 302 8. In the case of firearms, the type of action, caliber or
 303 gauge, number of barrels, barrel length, and finish.
- 304 9. Any other unique identifying marks, numbers, or
 305 letters.

306 (c) A description of the person from whom the goods were
 307 acquired, including:
 308 1. Full name, current residential address, workplace, and

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309 home and work phone numbers.

310 2. Height, weight, date of birth, race, gender, hair
311 color, eye color, and any other identifying marks.

312 3. The right thumbprint, free of smudges and smears, of
313 the person from whom the goods were acquired.

314 (d) Any other information required by the form approved by
315 the Department of Law Enforcement.

316 (2) The secondhand dealer shall require verification of
317 the identification by the exhibition of a government-issued
318 photographic identification card such as a driver's license or
319 military identification card. The record shall contain the type
320 of identification exhibited, the issuing agency, and the number
321 thereon.

322 (3) The seller shall sign a statement verifying that the
323 seller is the rightful owner of the goods or is entitled to
324 sell, consign, or trade ~~pledge~~ the goods.

325 (4) Any person who knowingly gives false verification of
326 ownership or who gives a false or altered identification, and
327 who receives money from a secondhand dealer for goods sold,
328 consigned, or traded ~~pledged~~ commits:

329 (a) If the value of the money received is less than \$300,
330 a felony misdemeanor of the third ~~first~~ degree, punishable as
331 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

332 (b) If the value of the money received is \$300 or more, a
333 felony of the second ~~third~~ degree, punishable as provided in s.
334 775.082, s. 775.083, or s. 775.084.

335 (5) Secondhand dealers are exempt from the provisions of
336 this section for all transactions involving secondhand sports

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337 equipment except secondhand sports equipment that is permanently
338 labeled with a serial number.

339 (6) If the appropriate law enforcement agency supplies a
340 secondhand dealer with appropriate software and the secondhand
341 dealer has computer capability, secondhand dealer transactions
342 shall be electronically transferred. If a secondhand dealer does
343 not have computer capability, the appropriate law enforcement
344 agency may provide the secondhand dealer with a computer and all
345 necessary equipment for the purpose of electronically
346 transferring secondhand dealer transactions. The appropriate law
347 enforcement agency shall retain ownership of the computer,
348 unless otherwise agreed upon. The secondhand dealer shall
349 maintain the computer in good working order, ordinary wear and
350 tear excepted. In the event the secondhand dealer transfers
351 secondhand dealer transactions electronically, the secondhand
352 dealer is not required to also deliver to the appropriate law
353 enforcement agency the original or copies of the secondhand
354 transaction forms. For the purpose of a criminal investigation,
355 the appropriate law enforcement agency may request that the
356 secondhand dealer produce an original of a transaction form that
357 has been electronically transferred. The secondhand dealer shall
358 deliver this form to the appropriate law enforcement agency
359 within 24 hours after the request.

360 (7) If the original transaction form is lost or destroyed
361 by the appropriate law enforcement agency, a copy may be used by
362 the secondhand dealer as evidence in court. When an electronic
363 image of a customer's identification is accepted for a
364 transaction, the secondhand dealer must maintain the electronic

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image in order to meet the recordkeeping requirements applicable to the original transaction form. If a criminal investigation occurs, the secondhand dealer shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement agency.

Section 3. Section 538.05, Florida Statutes, is amended to read:

538.05 Inspection of records and premises of secondhand dealers.--

(1) The entire registered premises and required records of each secondhand dealer are subject to inspection during regular business hours by any law enforcement officer with jurisdiction ~~the police department if the premises are located within a municipality or, if located outside a municipality, by the sheriff's department of the county in which the premises are located, and by any state law enforcement officer who has jurisdiction over the dealer.~~

(2) The inspection authorized by subsection (1) shall consist of an examination on the registered premises of the inventory and required records to determine whether the records and inventory are being maintained on the registered premises as required by s. 538.04 and whether the holding period required by s. 538.06 is being complied with.

Section 4. Section 538.06, Florida Statutes, is amended to read:

538.06 Holding period.--

(1) A secondhand dealer shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any secondhand

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393 goods within 15 calendar days after ~~of~~ the date of acquisition
394 of the goods. Such holding periods are not applicable when the
395 person known by the secondhand dealer to be the person from whom
396 the goods were acquired desires to redeem, repurchase, or
397 recover the goods, provided the dealer can produce the record of
398 the original transaction with verification that the customer is
399 the person from whom the goods were originally acquired.

400 (2) A secondhand dealer must maintain actual physical
401 possession of all secondhand goods throughout a transaction. It
402 is unlawful for a secondhand dealer to accept title or any other
403 form of security in secondhand goods in lieu of actual physical
404 possession. A secondhand dealer who accepts title or any other
405 form of security in secondhand goods in lieu of actual physical
406 possession commits a misdemeanor of the first degree, punishable
407 as provided in s. 775.082 or s. 775.083.

408 (3) Upon probable cause that goods held by a secondhand
409 dealer are stolen, a law enforcement officer with jurisdiction
410 may place a 90-day written hold order on the goods ~~extend the~~
411 ~~holding period to a maximum of 60 days~~. However, the hold
412 ~~holding period~~ may be extended beyond 90 ~~60~~ days by a court of
413 competent jurisdiction upon a finding of probable cause that the
414 property is stolen and further holding is necessary for the
415 purposes of trial or to safeguard such property. The dealer
416 shall assume all responsibility, civil or criminal, relative to
417 the property or evidence in question, including responsibility
418 for the actions of any employee with respect thereto.

419 (4) While a hold order is in effect, the secondhand dealer
420 must, upon request, release the property subject to the hold

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order to the custody of a law enforcement officer with jurisdiction for use in a criminal investigation. The release of the property to the custody of the law enforcement officer is not considered a waiver or release of the secondhand dealer's rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the secondhand dealer unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the person from whom the secondhand dealer acquired the property to pay restitution to the secondhand dealer in the amount that the secondhand dealer paid for the property together with reasonable attorney's fees and costs.

~~(5)-(4)~~ All dealers in secondhand property regulated by this chapter shall maintain transaction records for 3 5 years.

Section 5. Section 538.07, Florida Statutes, is amended to read:

538.07 Penalty for violation of chapter.--

(1) Except as ~~where~~ otherwise provided herein, a person who knowingly violates any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not to exceed \$10,000.

(2) When the lawful owner recovers stolen property from a secondhand dealer and the person who sold or pledged the stolen property to the secondhand dealer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make restitution to either the secondhand dealer or the lawful owner, as applicable, pursuant to s. 775.089.

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449 Section 6. Section 538.09, Florida Statutes, is amended to
450 read:

451 538.09 Registration.--

452 (1) A secondhand dealer shall not engage in the business
453 of purchasing, consigning, or trading ~~pawning~~ secondhand goods
454 from any location without registering with the Department of
455 Revenue. A fee equal to the federal and state costs for
456 processing required fingerprints must be submitted to the
457 department with each application for registration. One
458 application is required for each dealer. If a secondhand dealer
459 is the owner of more than one secondhand store location, the
460 application must list each location, and the department shall
461 issue a duplicate registration for each location. For purposes
462 of subsections (4) and (5) of this section, these duplicate
463 registrations shall be deemed individual registrations. A dealer
464 shall pay a fee of \$6 per location at the time of registration
465 and an annual renewal fee of \$6 per location on October 1 of
466 each year. All fees collected, less costs of administration,
467 shall be transferred into a trust fund to be established and
468 entitled the Secondhand Dealer and Secondary Metals Recycler
469 Clearing Trust Fund. The Department of Revenue shall forward the
470 full set of fingerprints to the Department of Law Enforcement
471 for state and federal processing, provided the federal service
472 is available, to be processed for any criminal justice
473 information as defined in s. 943.045. The cost of processing
474 such fingerprints shall be payable to the Department of Law
475 Enforcement by the Department of Revenue. The department may
476 issue a temporary registration to each location pending

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477 completion of the background check by state and federal law
478 enforcement agencies, but shall revoke such temporary
479 registration if the completed background check reveals a
480 prohibited criminal background. An applicant for a secondhand
481 dealer registration must be a natural person who has reached the
482 age of 18 years.

483 (a) If the applicant is a partnership, all the partners
484 must apply.

485 (b) If the applicant is a joint venture, association, or
486 other noncorporate entity, all members of such joint venture,
487 association, or other noncorporate entity must make application
488 for registration as natural persons.

489 (c) If the applicant is a corporation, the registration
490 must include the name and address of such corporation's
491 registered agent for service of process in the state and a
492 certified copy of statement from the Secretary of State that the
493 corporation is duly organized in the state or, if the
494 corporation is organized in a state other than Florida, a
495 certified copy of statement from the Secretary of State that the
496 corporation is duly qualified to do business in this state. If
497 the dealer has more than one location, the application must list
498 each location owned by the same legal entity and the department
499 shall issue a duplicate registration for each location.

500 (2) The secondhand dealer shall furnish with her or his
501 registration a complete set of her or his fingerprints,
502 certified by an authorized law enforcement officer, and a recent
503 fullface photographic identification card of herself or himself.
504 The Department of Law Enforcement shall report its findings to

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the Department of Revenue within 30 days after the date fingerprint cards are submitted for criminal justice information.

(3) The secondhand dealer's registration shall be conspicuously displayed at her or his registered location ~~principal place of business~~. A secondhand dealer must hold secondhand goods at the registered location until 15 days after the secondhand transaction or until any extension of the holding period has expired, whichever is later, ~~and must retain records of each transaction which is not specifically exempted by this chapter. A secondhand dealer shall not dispose of property at any location until the holding period has expired unless the transaction is specifically exempted by this chapter.~~

(4) The department may impose a civil fine of up to \$10,000 for each violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under s. 120.69 to recover the fine.

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with

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any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;

(e) Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

(f) Has, within the preceding 10-year ~~5-year~~ period for new registrants who apply for registration on or after October 1, 2005, been convicted of, or has entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of s. 812.015, or any fraudulent ~~or dishonest~~ dealing;

(g) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(h) Has failed to pay any sales tax owed to the Department of Revenue.

In the event the department determines to deny an application or

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revoke a registration, it shall enter a final order with its findings on the register of secondhand dealers and their business associates, if any; and denial, suspension, or revocation of the registration of a secondhand dealer shall also deny, suspend, or revoke the registration of such secondhand dealer's business associates.

(6) Upon the request of a law enforcement official, the Department of Revenue shall release to the official the name and address of any secondhand dealer registered to do business within the official's jurisdiction.

Section 7. Section 538.16, Florida Statutes, is repealed.

Section 8. Subsection (4) of section 516.02, Florida Statutes, is amended to read:

516.02 Loans; lines of credit; rate of interest; license.--

(4) This chapter does not apply to any person who does business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies. ~~This chapter also does not apply to title loans as defined in s. 538.03(1)(i) or pawns as defined in s. 538.03(1)(d).~~ A pawnbroker may not be licensed to transact business under this chapter.

Section 9. For the purpose of incorporating the amendment made by this act to section 538.03, Florida Statutes, in a reference thereto, paragraph (f) of subsection (3) of section 790.335, Florida Statutes, is reenacted to read:

790.335 Prohibition of registration of firearms.--

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589 (3) EXCEPTIONS.--The provisions of this section shall not
590 apply to:

591 (f) Firearm records, including paper pawn transaction
592 forms and contracts on firearm transactions, required by
593 chapters 538 and 539.

594 1. Electronic firearm records held pursuant to chapter 538
595 may only be kept by a secondhand dealer for 30 days after the
596 date of the purchase of the firearm by the secondhand dealer.

597 2. Electronic firearm records held pursuant to chapter 539
598 may only be kept by a pawnbroker for 30 days after the
599 expiration of the loan that is secured by a firearm or 30 days
600 after the date of purchase of a firearm, whichever is
601 applicable.

602 3. Except as required by federal law, any firearm records
603 kept pursuant to chapter 538 or chapter 539 shall not, at any
604 time, be electronically transferred to any public or private
605 entity, agency, business, or enterprise, nor shall any such
606 records be copied or transferred for purposes of accumulation of
607 such records into lists, registries, or databases.

608 4. Notwithstanding subparagraph 3., secondhand dealers and
609 pawnbrokers may electronically submit firearm transaction
610 records to the appropriate law enforcement agencies as required
611 by chapters 538 and 539; however, the law enforcement agencies
612 may not electronically submit such records to any other person
613 or entity and must destroy such records within 60 days after
614 receipt of such records.

615 5. Notwithstanding subparagraph 3., secondhand dealers and
616 pawnbrokers may electronically submit limited firearms records

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617 consisting solely of the manufacturer, model, serial number, and
618 caliber of pawned or purchased firearms to a third-party private
619 provider that is exclusively incorporated, exclusively owned,
620 and exclusively operated in the United States and that restricts
621 access to such information to only appropriate law enforcement
622 agencies for legitimate law enforcement purposes. Such records
623 must be destroyed within 30 days by the third-party provider. As
624 a condition of receipt of such records, the third-party provider
625 must agree in writing to comply with the requirements of this
626 section. Any pawnbroker or secondhand dealer who contracts with
627 a third-party provider other than as provided in this act or
628 electronically transmits any records of firearms transactions to
629 any third-party provider other than the records specifically
630 allowed by this paragraph commits a felony of the second degree,
631 punishable as provided in s. 775.082 or s. 775.083.

632 Section 10. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 835
SPONSOR(S): Attkisson
TIED BILLS:

Affordable Housing

IDEN./SIM. BILLS: CS/SB 934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>		Livingston <i>AKL</i>	Liepshutz <i>MLB</i>
2) <u>Growth Management Committee</u>			
3) <u>Transportation & Economic Development Appropriations Committee</u>			
4) <u>Commerce Council</u>			
5) _____			

SUMMARY ANALYSIS

Chapter 420, F.S., is cited as the "State Housing Strategy Act." The "Florida Homeownership Assistance Program" is designed to provide financial assistance to home buyers who meet the qualification criteria under the program. The State Housing Initiatives Partnership Program is available to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. Chapter 723, F.S., addresses various aspects of the relationship between a mobile home owner and a mobile home park owner, including financial assistance to home owners who are displaced when the property, under certain circumstances, is no longer used as a mobile home park.

The bill amends the statutory guidelines of the Homeownership Assistance Program to provide a funding mechanism for certain classroom teachers to help offset any down payment required to purchase a home. To qualify for financial assistance the individual must be employed as a K-12 classroom teacher and be certified in a critical need area of exceptional student education, mathematics, science, or reading in the state.

The bill requires a local government or community redevelopment agency (CRA) with a mobile home park within its jurisdiction which is closing due to a change in land use to use available funding sources to provide financial assistance to help offset the costs to relocate those home owners displaced by the change in use of the property. It requires local governments to approve "new" mobile home parks to accommodate displaced residents and provide other affordable housing options. The bill encourages local governments to use regulatory and financial incentives for the continued operation of mobile home parks rather than change the use of the property.

The bill imposes a late fee on mobile home park owners who change the use of land for a mobile home park, but fail to make the required payment to the Florida Mobile Home Relocation Corporation. It limits the period for filing an application to help fund moving expenses of the home owner to 1 year after the expiration of the eviction period as established in the notice of the change of land use. The bill also encourages mobile home park owners to organize as a homeowners' association for the purpose of negotiating with the park owner a right of first refusal to purchase the park.

The bill requires local governments to provide a written document to substantiate its determination that adequate mobile home parks or other suitable facilities exist for the relocation of the home owners before approving a rezoning application for a mobile home park. It also requires the governmental entity considering the rezoning application to prepare a good-faith estimate of the fiscal benefits of such a change in land use.

The bill is not anticipated to have a significant fiscal impact on state or local government. Funding for the provision of services should reflect a shift of appropriations among programs under the State Housing Trust Fund and Mobile Home Relocation Trust Fund.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 2/17/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

"Provide limited government" - the bill provides benefits for potential homeownership within the current framework that is designed to support affordable housing goals. In so doing the bill states that "local governments and redevelopment agencies assist in the relocation of and the provision of assistance to mobile home owners and are authorized to use all available funding sources so that the state's most needy residents are protected."

"Ensure lower taxes" - the bill imposes late fees for failure to make timely payments to the Florida Mobile Home Relocation Corporation.

"Safeguard individual liberty" - the bill states, in part, "the Legislature finds that a right of first refusal to purchase a mobile home park is a property right that should be negotiated between two parties at arm's length and for due consideration."

"Empower families" - The bill is titled "an act relating to affordable housing."

B. EFFECT OF PROPOSED CHANGES:

Present situation – Affordable housing

Chapter 420, F.S., is cited as the "State Housing Strategy Act." Section 420.5088, F.S., establishes the "Florida Homeownership Assistance Program" (HAP) to provide financial assistance to home buyers who meet the qualification criteria under the program. The State Housing Initiatives Partnership Program (SHIP) is available to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing.

Chapter 723, F.S., addresses various aspects of the relationship between a mobile home owner and a mobile home park owner, including financial assistance to home owners who are displaced when the property, under certain circumstances, is no longer used as a mobile home park.

The Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) was created by the Legislature as an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in Florida. The FHFC administers various programs which facilitate the development and purchase of affordable housing for Floridians. These programs are financed through a variety of state, federal and local sources.

Florida Homeownership Assistance Program

The HAP was created by s. 420.5088, F.S., for the purpose of assisting low-income persons in purchasing a home by reducing the cost of the home with below-market construction financing; by reducing the amount of down payment and closing costs paid by the borrower to a maximum of five percent of the purchase price; or by reducing the monthly payment to an affordable amount for the purchaser. Loans are made available at an interest rate not to exceed three percent. The balance of any loan is due at closing if the property is sold or transferred.

State Housing Initiatives Partnership Program

FHFC administers the SHIP, which provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The

program was designed to serve very low, low and moderate income families. Depending on an individual's income, a person could be eligible for home repair or replacement, down payment assistance, rental housing assistance and other affordable housing assistance.

State's Teacher Shortage

Historically, two trends have determined the need for classroom teachers: teacher turnover and student enrollment. The Florida Department of Education's official teacher recruiting website (<http://www.teachinflorida.com>) currently lists four programs that provide housing assistance to teachers:

1. The TEACHER NEXT DOOR PROGRAM offers HUD-owned, single family homes to public and private school teachers at a 50 percent discount. To be eligible, teachers must be employed full-time and agree to make the home their sole residence for three years following the purchase. In addition, teachers must work in the area in which the home is located.
2. The TEACHER ZERO DOWN PROGRAM, sponsored by Bank of America, helps teachers overcome one of the biggest obstacles to home ownership—the down payment. This program provides zero percent financing with little or no cash at closing.
3. The TEACHER FLEX PROGRAM, a Bank of America program, provides teachers with home loans that do not require a large savings or an extensive credit history. This program requires a three percent down payment with \$500 from personal funds and little cash at closing.
4. The APARTMENT ASSISTANCE/RESIDENTIAL SUBSIDIES PROGRAM, created by Equity Residential Properties Trust, in partnership with the Department of Education, reduces teachers' rent by providing a zero application fee, taking \$300 off move-in fees, and providing \$500 credit towards the purchase of a home.

Teachers also may qualify for various FHFC programs, depending on their income and location.

Effect of proposed changes

The bill amends the statutory guidelines of the HAP to provide a funding mechanism for certain classroom teachers to help offset any down payment required to purchase a home. To qualify for financial assistance the individual must be employed as a K-12 classroom teacher and be certified in a critical need area of exceptional student education, mathematics, science, or reading in the state.

The FHFC is authorized by the bill to establish additional eligibility criteria, including:

- homestead residency, and
- a commitment of no less than five years of full-time, permanent employment as a teacher.

The bill mandates payment from HAP funds in the amount of \$4,000 as down payment financial assistance under two scenarios:

(1) "if all [local government jurisdictions] within which an eligible recipient is employed and resides waives any impact fees that occur incidental to the recipient's home purchase;"

and, in addition to the funds made available in (1) above,

(2) "...the [HAP] program shall provide matching funds up to \$4,000 as down payment assistance if the county within which an eligible recipient is employed provides State Housing Initiatives Partnership Program [SHIP] funds to the eligible recipient..."

The bill includes a "statement of encouragement" directed to each county to develop an annual county housing plan that emphasizes the recruitment and retention of classroom teachers certified in critical need areas.

The bill appropriates the sum of \$50,000,000 for fiscal year 2006-2007 from the State Housing Trust Fund to the HAP to provide funding for the K-12 classroom teacher program created in the bill.

Present situation – Mobile home housing

Florida Mobile Home Park Regulation – In General

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Traditional landlord-tenant concepts are thought inapplicable where the land is owned by the park and the homes on the property are owned by the home owner. This relationship is impacted by the high cost of moving a mobile home. Chapter 723, F.S., governs the relationship between mobile home park owners and mobile home owners.

A mobile home park of 9 or fewer lots is not regulated by Chapter 723, F.S. Currently, there are 321,549 mobile home lots and 2,601 mobile home parks filed with the Division of Land Sales, Condominiums, and Mobile Homes.

Present situation – Financial assistance for mobile home relocation expenses

Section 723.0612, F.S., relates to change in use of the land comprising a mobile home park, or a change in the portion upon which the tenant resides. It also addresses relocation expenses and payments by a mobile home park owner. This section provides that, if a mobile home owner is required to move due to a change in use of the mobile home park property, and the mobile home owner meets certain conditions, the mobile home owner is entitled to financial assistance to help offset certain moving expenses.

Relocation trust fund

Section 723.06115, F.S., establishes the Florida Mobile Home Relocation Trust Fund within the Department of Business and Professional Regulation. The relocation trust fund was created to provide revenues for payments to mobile home owners under the relocation program and for the administrative costs associated with managing the trust fund.

Section 723.007, F.S., imposes an annual assessment of \$4.00 per lot on mobile home lots located within mobile home parks. The fee is collected by the mobile home park owner and is paid to the Division of Land Sales, Condominiums, and Mobile Homes. These revenues are deposited into the Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to partially fund operations of the division. Additionally, this section imposes a one dollar surcharge on the annual assessment for deposit in the relocation trust fund. Section 320.08015, F.S., relating to motor vehicles, imposes an additional one dollar annual license tax on mobile homes for deposit in the relocation trust fund.

Relocation corporation

Section 723.0611, F.S., relates to the Florida Mobile Home Relocation Corporation (corporation). The corporation is administered by a board of directors made up of six members. The corporation is authorized to manage the relocation trust fund.

Currently, as a result of being required to relocate due to a change in the use of the mobile home park, an owner of a mobile home has the option of being reimbursed for moving expenses or under subsection (7) of s. 723.0612, F.S., a mobile home owner may elect to sell the mobile home rather than move it. When the mobile home owner makes application for payment and is approved by the

corporation, the mobile home owner is then authorized to receive compensation from the corporation which is paid out of the relocation trust fund.

The amount of the payment is the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or \$3,000 for a single-section mobile home, or \$6,000 for a multi-section mobile home, whichever is less. Moving expenses are defined to include the cost of taking down, moving, and setting up the mobile home in a new location. The mobile home park owner is required to make payment to the corporation in the amount of \$2,750 per single-section mobile home and \$3,750 per multi-section mobile home for each application for moving expenses due to a change in land use. These payments are due within 30 days after receipt of the invoice from the corporation. Payments received by the corporation are deposited in the relocation trust fund.

Sale of a mobile home park

The mobile home owners in a mobile home park have a statutory right of first refusal to purchase the mobile home park under certain circumstances. In a mobile home park where the mobile home owners have created a homeowners' association, if the mobile home park owner "offers [the] mobile home park for sale", the mobile home park owner must notify the homeowners' association of the offer. This requirement applies when the mobile home park is offered for sale by the owner to the general public or another individual. A mobile home park owner who receives an unsolicited offer to purchase the mobile home park is under no duty to offer the homeowners' association the opportunity to purchase the mobile home park.

Local zoning requirements

Section 723.083, F.S., prohibits any local or state government agency from rezoning (or taking "any other official action") which would result in the removal or relocation of mobile home owners residing in mobile home parks, unless the agency first determines that there are adequate mobile home parks or other suitable facilities in existence for relocating the mobile home owners. In an informal opinion issued to Pinellas County, the Attorney General advised that the phrase "adequate mobile home parks or other suitable facilities" means the local government must consider all facilities suitable for the relocation of the mobile home owners, not their mobile homes. See Informal Opinion of Atty.Gen. Jim Smith (January 3, 1986). The opinion includes apartments, trailer parks, and boarding houses as examples of "other suitable facilities" which a government may consider for the relocation of owners.

Effect of proposed changes

Sources of assistance

The bill recognizes the loss of affordable housing which results when the land use for a mobile home park changes and its residents are forced to relocate. The bill requires a local government or CRA with a mobile home park within its jurisdiction which is closing due to a change in the use of land to use available funding sources to help offset the financial impacts. Funds are to be used to assist with the cost of relocating mobile homes, assist with the purchase of a new mobile home if relocation of the existing home is not possible, assist the homeowner in relocating to other types of housing, and relocate the mobile home within the same neighborhood or community.

The bill requires a local government or CRA to use tax increment financing, urban infill and redevelopment funds, general revenue, housing loan assistance program funds, documentary stamp tax revenues from the redevelopment of the mobile home park property which is available to the local government, and impact and permit fees derived from the redevelopment of the park property. The local government or CRA may also use other available sources.

The bill requires local governments to approve the rezoning of property for the development of mobile home parks to provide new homes, affordable housing, or to accommodate the relocation of mobile home owners from a park that is closing due to a change in land use. A local government or CRA is

authorized to enter into a development agreement that has a term of 10 years or less with the owner of a mobile home park to encourage the continued use of the mobile home park for affordable housing and may contain incentives, such as, transferable development credits to the community, tax incentives, or housing assistance to the mobile home park owner.

The Department of Community Affairs is required to provide technical assistance to local governments that wish to promote housing assistance for mobile home park owners who provide affordable housing to park residents.

Relocation payments

The bill imposes a late fee if a mobile home park owner who is changing the land use for a mobile home park fails to make the required payment to the relocation trust fund for each single-section and multi-section mobile home for which the home owner has made application for moving expenses. The late fee ranges from 10 percent to 25 percent depending on when the payment is made and the fee is imposed beginning 30 days after receipt of the invoice for payment.

The bill prohibits a mobile home owner from making an application for funding if the applicant has settled a claim or cause of action against the corporation, park owner, or the park owner's successors in interest directly related to the change in the use of the land for the mobile home park. The bill limits the period for filing an application for moving expenses to 1 year after the expiration of the eviction period as established in the notice of the change of land use.

Documentation

The bill requires a governmental entity to prepare a written document substantiating that adequate mobile home parks or other suitable facilities exist for the relocation of the home owners before the governmental entity may approve an application for rezoning or take any other official action that would result in the removal or relocation of home owners living in a mobile home park. It also requires the governmental entity considering the rezoning or official action to prepare a good-faith estimate of the fiscal benefits of the proposed change in land use. The written document substantiating the existence of adequate mobile home parks or facilities for relocation and the good-faith estimate must be available for public inspection and copying at least 10 days prior to the meeting during which the rezoning or other official act is scheduled to be considered.

C. SECTION DIRECTORY:

Section 1. Amends s. 163.31772 F.S., to cite legislative findings and intent relating to changes in land use affecting mobile home parks; to specify requirements regarding funding sources, rezoning, development agreements, and housing assistance.

Section 2. Amends s. 420.5088, F.S., to provide down payment assistance under HAP funding to certain K-12 classroom teachers; requiring the FHFC to develop eligibility criteria; and encouraging counties to develop annual county housing plans that emphasize the recruitment and retention of classroom teachers.

Section 3. Amends s. 723.06116, F.S., to authorize late fees to be imposed if a mobile home park owner does not make timely payments to the FMHRC.

Section 4. Amends s. 723.0612, F.S., to create time frames for submitting and processing applications for funding for relocation expenses by the relocation corporation.

Section 5. Amends s. 723.071, F.S., to specify legislative findings relating to the sale of mobile home parks and encourages owners to organize as homeowners' associations to negotiate with a park owner.

Section 6. Amends s. 723.072, F.S., to correct cross-references.

Section 7. Amends s. 723.083, F.S., to require local governments to document in writing the existence of facilities available for relocation of residents of a mobile home park and a written estimate of fiscal benefits.

Section 8. Provides an appropriation of \$50,000,000 from the State Housing Trust Fund.

Section 9. Effective date - Section 8 of the bill takes effect July 1, 2006. The remainder of the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

Not anticipated to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Florida Mobile Home Relocation Corporation estimates that the imposition of the graduated late fee will reduce the percentage of late payments to 12 percent, as compared to the 25 percent for fiscal year 2004-2005, and the total late fees collected would be \$7,560 per year.

2. Expenditures:

Current law requires a local government to determine that adequate mobile home parks or other suitable facilities exist for the relocation of the home owners before approving a rezoning application for a mobile home park. The bill requires the determination to be in the form of a written document. The bill also requires the governmental entity considering the rezoning or official action to prepare a good-faith estimate of the fiscal benefits of such a change in land use.

The DCA is required to provide technical assistance to a local government or CRA that wishes to offer a transfer of development rights program or financial assistance as incentives for mobile home park owners to continue to provide affordable housing. There are costs associated with the research and development of these technical assistance programs, implementation, and outreach. The DCA is in the process of estimating these costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mobile home owners would benefit if local governments provide funding for relocation expenses when the owners are evicted from a park that is undergoing a change in land use. The mobile home park owners would benefit from any financial assistance provided by the local government.

D. FISCAL COMMENTS:

This bill requires a local government or CRA, having a mobile home park within its jurisdiction which is closing due to a change in the use of land, to use available funding sources to provide relocation assistance to the mobile home owners displaced by the change. The bill does not specify the amount of assistance that must be provided to the mobile home owners.

The bill appears to shift funding not create new revenues. The bill specifies in part "notwithstanding any other provision of law, a local government or community redevelopment agency is authorized to and shall....use revenues derived from sources that include...."

The bill is not anticipated to have a significant fiscal impact on state or local government. Funding for the operations of services should reflect a shift of appropriations from program to program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature...

Article VII, Section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents.

The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms. However, under the bill's provisions the overall fiscal impact on counties and municipalities should be insignificant. As a result, the bill would appear to be exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill specifically authorizes the Department of Community Affairs to adopt rules to promote the transfer of development rights for mobile home park owners who provide affordable housing.

The bill also specifically authorizes the Department of Community Affairs to adopt rules to promote housing assistance to mobile home park owners who provide affordable housing in urban areas.

The bill, on line 158, specifies that

"the corporation [Florida Housing Finance Corporation] shall develop criteria to determine which persons are eligible to receive down payment assistance..."

The authority of the corporation may be clearer if the bill specifies that the criteria requirements be adopted by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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1 A bill to be entitled

2 An act relating to affordable housing; creating s.

3 163.31772, F.S.; providing legislative findings and intent

4 relating to changes in land use affecting mobile home

5 parks; providing definitions; providing requirements for

6 local governments and community redevelopment agencies

7 regarding specified funding sources to assist certain

8 mobile home owners; requiring local governments to permit

9 and approve rezoning of property for the development of

10 new mobile home parks; providing that a local government

11 or redevelopment agency may enter into a development

12 agreement with the owner of a mobile home park to

13 encourage its continued use for affordable housing;

14 limiting the length of certain development agreements;

15 amending s. 420.5088, F.S.; providing down payment

16 assistance under the Florida Homeownership Assistance

17 Program to certain persons employed as K-12 classroom

18 teachers in the schools in this state; requiring the

19 Florida Housing Finance Corporation to develop eligibility

20 criteria; providing conditions for counties under which

21 funds may be distributed; providing for a lien to be

22 placed on a recipient's property if the recipient does not

23 fulfill a specified commitment; encouraging counties to

24 develop annual county housing plans that emphasize the

25 recruitment and retention of certain classroom teachers;

26 requiring the corporation to encourage and review county

27 housing plans; amending s. 723.06116, F.S.; providing for

28 late fees if a mobile home park owner does not make

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payments to the Florida Mobile Home Relocation Corporation within the required time period; amending s. 723.0612, F.S.; prohibiting approval of certain applications for funding submitted by persons who have settled certain claims or causes of action; providing certain time periods within which an application for funding for relocation expenses must be submitted to the corporation; amending s. 723.071, F.S.; providing legislative findings relating to the sale of mobile home parks; amending s. 723.072, F.S., relating to an affidavit of compliance by an owner of a mobile home park; conforming cross-references; amending s. 723.083, F.S.; requiring an agency of municipal, local, county, or state government to provide a report that substantiates the existence of adequate mobile home parks before approving the removal or relocation of a park; requiring a written estimate of fiscal benefits; requiring certain reports to be made available to the public within a specified time period; providing an appropriation; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 163.31772, Florida Statutes, is created to read:

163.31772 Mobile home parks; change in use of land; legislative findings and intent.--

(1) The Legislature finds that:

(a) Mobile home parks provide safe and affordable housing

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57 to many residents of this state;

58 (b) The rising price of real estate in this state is
59 causing significant loss of affordable housing, including mobile
60 home parks;

61 (c) Some mobile home park residents are being evicted and
62 forced to relocate from their communities due to the change in
63 the use of land from mobile home park rentals to some other use;

64 (d) The loss of this type of affordable housing is of
65 statewide concern; and

66 (e) Local governments benefit significantly from the
67 redevelopment of these mobile home parks through increased local
68 and state tax revenues but may not have authority to use all
69 available funding and revenue sources to assist these displaced
70 residents.

71 (2) It is the intent of the Legislature that local
72 governments and redevelopment agencies assist in the relocation
73 of and the provision of assistance to mobile home owners and are
74 authorized to use all available funding sources so that the
75 state's most needy residents are protected.

76 (3) As used in this section, the term:

77 (a) "Affordable" has the same meaning as provided in s.
78 420.602.

79 (b) "Community redevelopment agency" has the same meaning
80 as provided in s. 163.340.

81 (c) "Local government" means a county or municipality.

82 (d) "Mobile home park" has the same meaning as provided in
83 s. 723.003.

84 (4) Any local government or community redevelopment agency

85 having jurisdiction over a mobile home park that is being closed
86 due to a change in the use of land shall use all available
87 funding sources to:

88 (a) Assist homeowners with the cost of relocating their
89 homes;

90 (b) Assist homeowners in purchasing new manufactured or
91 mobile homes if the home they are currently occupying is not
92 capable of being moved to another location;

93 (c) Assist homeowners in relocating to any other adequate
94 and suitable housing; and

95 (d) To the greatest extent possible, assist in the
96 relocation of the homes of the mobile home owners to a mobile
97 home park in the same neighborhood or community.

98 (5) Notwithstanding any other provision of law, a local
99 government or community redevelopment agency is authorized to
100 and shall, for the purposes described in subsection (4), use
101 revenues derived from sources that include, but need not be
102 limited to, tax increment financing pursuant to s. 163.387,
103 urban infill and redevelopment funds pursuant to s. 163.2523,
104 general revenue funding, housing loan assistance programs,
105 documentary stamp tax revenues derived from the redevelopment of
106 the property which are available to the local government, and
107 impact and permit fees derived from the redevelopment of the
108 property.

109 (6) A local government shall take action to permit and
110 approve the rezoning of property for development of new mobile
111 home parks for the purpose of providing new homes or affordable
112 housing or for the relocation of mobile home owners who are

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displaced by a change in the use of land.

(7) Any local government or community redevelopment agency having jurisdiction over a mobile home park providing affordable housing as defined in this section may enter into a development agreement with the owner of the mobile home park to encourage the continued use of the mobile home park for affordable housing by incentives, including, but not limited to:

(a) Awarding transferable development credits to the community. The Department of Community Affairs shall provide technical assistance to local governments in order to promote the transfer of development rights for mobile home park owners who provide affordable housing. The department may adopt rules to administer this paragraph;

(b) Providing tax incentives, such as property tax abatement, for providing affordable housing; and

(c) Providing housing assistance to the mobile home park owner for the difference between the lot rental amount paid by the homeowners and either the lot rental amount charged in comparable mobile home parks that have similar facilities, services, amenities, and management or based upon the rental value of the property being dedicated to affordable housing based upon the property's fair market value. The Department of Community Affairs shall provide technical assistance to local governments in order to promote housing assistance to mobile home park owners who provide affordable housing in urban areas. The department shall adopt rules to administer this paragraph.

Any development agreement entered into under this subsection

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141 shall have a term that does not exceed 10 years.

142 Section 2. Subsection (7) is added to section 420.5088,
143 Florida Statutes, to read:

144 420.5088 Florida Homeownership Assistance Program.--There
145 is created the Florida Homeownership Assistance Program for the
146 purpose of assisting low-income persons in purchasing a home by
147 reducing the cost of the home with below-market construction
148 financing, by reducing the amount of down payment and closing
149 costs paid by the borrower to a maximum of 5 percent of the
150 purchase price, or by reducing the monthly payment to an
151 affordable amount for the purchaser. Loans shall be made
152 available at an interest rate that does not exceed 3 percent.
153 The balance of any loan is due at closing if the property is
154 sold or transferred.

155 (7) (a) The program shall provide down payment assistance
156 to each person who is employed as a K-12 classroom teacher and
157 certified in a critical need area in this state.

158 (b) The corporation shall develop criteria to determine
159 which persons are eligible to receive down payment assistance,
160 including the following criteria:

161 1. The person shall be employed as a K-12 classroom
162 teacher in this state.

163 2. The person shall be state certified in a critical need
164 area of exceptional student education, mathematics, science, or
165 reading.

166 3. The person shall declare his or her homestead and
167 maintain residency at his or her homestead.

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168 4. The person shall be employed in a full-time, permanent
169 capacity.

170 5. The person shall demonstrate a 5-year minimum
171 commitment to continued employment as a K-12 classroom teacher
172 in a school within the county of current employment.

173 (c)1. The program shall provide \$4,000 as down payment
174 assistance if all city, county, or appropriate governmental
175 subdivisions or agencies within which an eligible recipient is
176 employed and resides waives any impact fees that occur
177 incidental to the recipient's home purchase.

178 2. In addition to the amount provided under subparagraph
179 1., the program shall provide matching funds up to \$4,000 as
180 down payment assistance if the county within which an eligible
181 recipient is employed provides State Housing Initiatives
182 Partnership Program funds to the eligible recipient under ss.
183 420.907-420.9079.

184 (d) A lien shall be placed on the recipient's property if
185 the recipient does not fulfill his or her 5-year commitment
186 specified in subparagraph (b)5.

187 (e) Each county is encouraged to develop an annual county
188 housing plan that emphasizes the recruitment and retention of
189 classroom teachers certified in critical need areas. The
190 corporation shall review and encourage such plans as a part of
191 the overall housing assistance effort of counties. Such plans
192 shall not affect any formulas relating to low or very low income
193 assistance programs approved by the corporation.

194 Section 3. Subsection (1) of section 723.06116, Florida
195 Statutes, is amended to read:

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196 723.06116 Payments to the Florida Mobile Home Relocation
197 Corporation.--

198 (1) If a mobile home owner is required to move due to a
199 change in use of the land comprising a mobile home park as set
200 forth in s. 723.061(1)(d), the mobile home park owner shall,
201 upon such change in use, pay to the Florida Mobile Home
202 Relocation Corporation for deposit in the Florida Mobile Home
203 Relocation Trust Fund \$2,750 for each single-section mobile home
204 and \$3,750 for each multisection mobile home for which a mobile
205 home owner has made application for payment of moving expenses.
206 The mobile home park owner shall make the payments required by
207 this section and by s. 723.0612(7) to the corporation within 30
208 days after receipt from the corporation of the invoice for
209 payment. Failure to make such payment within the required time
210 period shall result in a late fee being imposed.

211 (a) If payment is not submitted within 30 days after
212 receipt of the invoice, a 10-percent late fee shall be assessed.

213 (b) If payment is not submitted within 60 days after
214 receipt of the invoice, a 15-percent late fee shall be assessed.

215 (c) If payment is not submitted within 90 days after
216 receipt of the invoice, a 20-percent late fee shall be assessed.

217 (d) Any payment received 120 days or more after receipt of
218 the invoice shall include a 25-percent late fee.

219 Section 4. Subsection (9) of section 723.0612, Florida
220 Statutes, is amended, and subsection (12) is added to that
221 section, to read:

222 723.0612 Change in use; relocation expenses; payments by
223 park owner.--

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(9) Any person whose application for funding pursuant to subsection (1) or subsection (7) is approved for payment by the corporation shall be barred from asserting any claim or cause of action under this chapter directly relating to or arising out of the change in use of the mobile home park against the corporation, the park owner, or the park owner's successors in interest. No application for funding pursuant to subsection (1) or subsection (7) shall be approved by the corporation if the applicant has ~~either~~ filed a claim or cause of action, is actively pursuing a claim or cause of action, has settled a claim or cause of action, or has a judgment against the corporation, the park owner, or the park owner's successors in interest under this chapter directly relating to or arising out of the change in use of the mobile home park, unless such claim or cause of action is dismissed with prejudice.

(12) An application to the corporation for compensation under subsection (1) or subsection (7) must be received within 1 year after the expiration of the eviction period as established in the notice required under s. 723.061(1)(d). If the applicant files a claim or cause of action that disqualifies the applicant under subsection (9) and the claim is subsequently dismissed, the application must be received by the corporation within 6 months following filing of the dismissal with prejudice as required under subsection (9). However, such an applicant must apply within 2 years after the expiration of the eviction period as established in the notice required under s. 723.061(1)(d).

Section 5. Section 723.071, Florida Statutes, is amended to read:

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252 723.071 Sale of mobile home parks; legislative findings.--

253 (1) The Legislature finds that a right of first refusal to
 254 purchase a mobile home park is a property right that should be
 255 negotiated between two parties at arm's length and for due
 256 consideration. The Legislature further finds that this chapter
 257 does not preclude mobile home owners from purchasing a right of
 258 first refusal from a willing park owner. The Legislature
 259 therefore encourages mobile home owners to organize as a
 260 homeowners' association in accordance with this chapter for the
 261 purpose of negotiating a right of first refusal with a park
 262 owner.

263 (2) ~~(1)~~ (a) If a mobile home park owner offers a mobile home
 264 park for sale, she or he shall notify the officers of the
 265 homeowners' association created pursuant to ss. 723.075-723.079
 266 of the offer, stating the price and the terms and conditions of
 267 sale.

268 (b) The mobile home owners, by and through the association
 269 defined in s. 723.075, shall have the right to purchase the
 270 park, provided the home owners meet the price and terms and
 271 conditions of the mobile home park owner by executing a contract
 272 with the park owner within 45 days, unless agreed to otherwise,
 273 from the date of mailing of the notice and provided they have
 274 complied with ss. 723.075-723.079. If a contract between the
 275 park owner and the association is not executed within such 45-
 276 day period, then, unless the park owner thereafter elects to
 277 offer the park at a price lower than the price specified in her
 278 or his notice to the officers of the homeowners' association,
 279 the park owner has no further obligations under this subsection,

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280 and her or his only obligation shall be as set forth in
281 subsection (3) ~~(2)~~.

282 (c) If the park owner thereafter elects to offer the park
283 at a price lower than the price specified in her or his notice
284 to the home owners, the home owners, by and through the
285 association, will have an additional 10 days to meet the price
286 and terms and conditions of the park owner by executing a
287 contract.

288 (3)~~(2)~~ If a mobile home park owner receives a bona fide
289 offer to purchase the park that she or he intends to consider or
290 make a counteroffer to, the park owner's only obligation shall
291 be to notify the officers of the homeowners' association that
292 she or he has received an offer and disclose the price and
293 material terms and conditions upon which she or he would
294 consider selling the park and consider any offer made by the
295 home owners, provided the home owners have complied with ss.
296 723.075-723.079. The park owner shall be under no obligation to
297 sell to the home owners or to interrupt or delay other
298 negotiations and shall be free at any time to execute a contract
299 for the sale of the park to a party or parties other than the
300 home owners or the association.

301 (4)~~(3)~~(a) As used in subsections (2) ~~(1)~~ and (3) ~~(2)~~, the
302 term "notify" means the placing of a notice in the United States
303 mail addressed to the officers of the homeowners' association.
304 Each such notice shall be deemed to have been given upon the
305 deposit of the notice in the United States mail.

306 (b) As used in subsection (2) ~~(1)~~, the term "offer" means
307 any solicitation by the park owner to the general public.

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308 (5) ~~(4)~~ This section does not apply to:

309 (a) Any sale or transfer to a person who would be included

310 within the table of descent and distribution if the park owner

311 were to die intestate.

312 (b) Any transfer by gift, devise, or operation of law.

313 (c) Any transfer by a corporation to an affiliate. As used

314 herein, the term "affiliate" means any shareholder of the

315 transferring corporation; any corporation or entity owned or

316 controlled, directly or indirectly, by the transferring

317 corporation; or any other corporation or entity owned or

318 controlled, directly or indirectly, by any shareholder of the

319 transferring corporation.

320 (d) Any transfer by a partnership to any of its partners.

321 (e) Any conveyance of an interest in a mobile home park

322 incidental to the financing of such mobile home park.

323 (f) Any conveyance resulting from the foreclosure of a

324 mortgage, deed of trust, or other instrument encumbering a

325 mobile home park or any deed given in lieu of such foreclosure.

326 (g) Any sale or transfer between or among joint tenants or

327 tenants in common owning a mobile home park.

328 (h) Any exchange of a mobile home park for other real

329 property, whether or not such exchange also involves the payment

330 of cash or other boot.

331 (i) The purchase of a mobile home park by a governmental

332 entity under its powers of eminent domain.

333 Section 6. Subsection (1) of section 723.072, Florida

334 Statutes, is amended to read:

335 723.072 Affidavit of compliance with statutory

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requirements.--

(1) A park owner may at any time record, in the official records of the county where a mobile home park is situated, an affidavit in which the park owner certifies that:

(a) With reference to an offer by him or her for the sale of such park, he or she has complied with the provisions of s. 723.071(2) ~~(1)~~;

(b) With reference to an offer received by him or her for the purchase of such park, or with reference to a counteroffer which he or she intends to make, or has made, for the sale of such park, he or she has complied with the provisions of s. 723.071(3) ~~(2)~~;

(c) Notwithstanding his or her compliance with the provisions of either subsection (2) ~~(1)~~ or subsection (3) ~~(2)~~ of s. 723.071, no contract has been executed for the sale of such park between himself or herself and the park homeowners' association;

(d) The provisions of subsections (2) ~~(1)~~ and (3) ~~(2)~~ of s. 723.071 are inapplicable to a particular sale or transfer of such park by him or her, and compliance with such subsections is not required; or

(e) A particular sale or transfer of such park is exempted from the provisions of this section and s. 723.071.

Any party acquiring an interest in a mobile home park, and any and all title insurance companies and attorneys preparing, furnishing, or examining any evidence of title, have the absolute right to rely on the truth and accuracy of all

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statements appearing in such affidavit and are under no obligation to inquire further as to any matter or fact relating to the park owner's compliance with the provisions of s. 723.071.

Section 7. Section 723.083, Florida Statutes, is amended to read:

723.083 Governmental action affecting removal of mobile home owners.--

(1) No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners. The existence of adequate mobile home parks or other suitable facilities shall be substantiated in a written document provided by the agency.

(2) The agency of municipal, local, county, or state government considering an application for rezoning or other official action shall make a written good faith estimate of the fiscal benefits of rezoning or official action. The good faith estimate shall include, but need not be limited to, annual increases in property taxes or other revenue sources and any nonrecurring revenues or fees, including, but not limited to, impact fees, permit fees, connection fees, utility charges, or other revenues.

(3) The written reports required under this section shall be made available to the public for inspection and copying at

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392 least 10 days prior to the scheduled meeting for consideration
 393 of any such rezoning or other official act.

394 Section 8. The sum of \$50,000,000 is appropriated for
 395 fiscal year 2006-2007 from the State Housing Trust Fund to the
 396 Florida Homeownership Assistance Program for the purposes of s.
 397 420.5088(7), Florida Statutes, as created by this act. This
 398 section shall take effect July 1, 2006.

399 Section 9. Except as otherwise expressly provided in this
 400 act, this act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **HB 835**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Business Regulation
Representative(s) Attkisson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 163.31772, Florida Statutes, is created
to read:

163.31772 Mobile home parks; change in use of land;
legislative findings and intent.--

(1) The Legislature finds that:

(a) Mobile home parks provide safe and affordable housing
to many residents of this state;

(b) The rising price of real estate in this state is
causing significant loss of affordable housing, including mobile
home parks;

(c) Some mobile home park residents are being evicted and
forced to relocate from their communities due to the change in
the use of land from mobile home park rentals to some other use;

(d) The loss of this type of affordable housing is of
statewide concern; and

(e) Local governments benefit from the redevelopment of
these mobile home parks through increased local and state tax

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revenues but may not have authority to use all available funding and revenue sources to assist these displaced residents.

(2) It is the intent of the Legislature that local governments and redevelopment agencies assist in the relocation of and the provision of assistance to mobile home owners and are authorized to use all available funding sources to further this intent.

(3) As used in this section, the term:

(a) "Affordable" has the same meaning as provided in s. 420.602.

(b) "Community redevelopment agency" has the same meaning as provided in s. 163.340.

(c) "Local government" means a county or municipality.

(d) "Mobile home park" has the same meaning as provided in s. 723.003.

(4) Any local government or community redevelopment agency having jurisdiction over a mobile home park that is being closed due to a change in the use of land shall provide assistance to any mobile home resident that is displaced as a result of the change in use and who meets the requirements of subsection (5) to:

(a) Assist homeowners with the cost of relocating their homes;

(b) Assist homeowners in purchasing new manufactured or mobile homes if the home they are currently occupying is not capable of being moved to another location; and

(c) Assist homeowners in relocating to any other adequate and suitable housing.

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The financial assistance provided to each qualified home owner shall be made as a supplement to the funds provided to each qualified home owner under the Florida Relocation Trust Fund.

(5) In order to receive supplemental assistance from the local government or CRA, the displaced mobile home owner must qualify as a very low income, low income or moderate income person as defined in s. 420.004.

Notwithstanding any other provision of law, a local government or community redevelopment agency is authorized to and shall, for the purposes described in subsection (4), use revenues derived from sources that include, but need not be limited to, tax increment financing pursuant to s. 163.387, urban infill and redevelopment funds pursuant to s. 163.2523, general revenue funding, housing loan assistance programs, documentary stamp tax revenues derived from the redevelopment of the property which are available to the local government, and impact and permit fees derived from the redevelopment of the property.

(6) A local government shall take action to permit and approve the rezoning of property for development of new mobile home parks for the purpose of providing new homes or affordable housing or for the relocation of mobile home owners who are displaced by a change in the use of land.

(7) Any local government or community redevelopment agency having jurisdiction over a mobile home park providing affordable housing as defined in this section may enter into a development agreement with the owner of the mobile home park to encourage the continued use of the mobile home park for affordable housing by incentives, including, but not limited to:

(a) Awarding transferable development credits to the community. The Department of Community Affairs shall provide

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technical assistance to local governments in order to promote the transfer of development rights for mobile home park owners who provide affordable housing. The department may adopt rules to administer this paragraph;

(b) Providing tax incentives, such as property tax abatement, for providing affordable housing; and

(c) Providing housing assistance to the mobile home park owner for the difference between the lot rental amount paid by the homeowners and either the lot rental amount charged in comparable mobile home parks that have similar facilities, services, amenities, and management or based upon the rental value of the property being dedicated to affordable housing based upon the property's fair market value. The Department of Community Affairs shall provide technical assistance to local governments in order to promote housing assistance to mobile home park owners who provide affordable housing in urban areas. The department shall adopt rules to administer this paragraph.

Any development agreement entered into under this subsection shall have a term that does not exceed 10 years.

Section 2. Subsection (7) is added to section 420.5088, Florida Statutes, to read:

420.5088 Florida Homeownership Assistance Program.--There is created the Florida Homeownership Assistance Program for the purpose of assisting low-income persons in purchasing a home by reducing the cost of the home with below-market construction financing, by reducing the amount of down payment and closing costs paid by the borrower to a maximum of 5 percent of the purchase price, or by reducing the monthly payment to an affordable amount for the purchaser. Loans shall be made available at an interest rate that does not exceed 3 percent.

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The balance of any loan is due at closing if the property is sold or transferred.

(7)(a) The program shall provide down payment assistance to each person who is employed as a K-12 classroom teacher and certified in a critical need area in this state.

(b) The corporation shall develop criteria to determine which persons are eligible to receive down payment assistance, including the following criteria:

1. The person shall be employed as a K-12 classroom teacher in this state.

2. The person shall be state certified in a critical need area of exceptional student education, mathematics, science, or reading.

3. The person shall declare his or her homestead and maintain residency at his or her homestead.

4. The person shall be employed in a full-time, permanent capacity.

5. The person shall demonstrate a 5-year minimum commitment to continued employment as a K-12 classroom teacher in a school within the county of current employment.

(c)1. The program shall provide \$4,000 as down payment assistance if all city, county, or appropriate governmental subdivisions or agencies within which an eligible recipient is employed and resides waives any impact fees that occur incidental to the recipient's home purchase.

2. In addition to the amount provided under subparagraph 1., the program shall provide matching funds up to \$4,000 as down payment assistance if the county within which an eligible recipient is employed provides State Housing Initiatives Partnership Program funds to the eligible recipient under ss. 420.907-420.9079.

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145 (d) A lien shall be placed on the recipient's property if
146 the recipient does not fulfill his or her 5-year commitment
147 specified in subparagraph (b)5.

148 (e) Each county is encouraged to develop an annual county
149 housing plan that emphasizes the recruitment and retention of
150 classroom teachers certified in critical need areas. The
151 corporation shall review and encourage such plans as a part of
152 the overall housing assistance effort of counties. Such plans
153 shall not affect any formulas relating to low or very low income
154 assistance programs approved by the corporation.

155 Section 3. Paragraph (d) of subsection (1) of section
156 723.061, Florida Statutes, is amended to read:

157 723.061 Eviction; grounds, proceedings.--

158 (1) A mobile home park owner may evict a mobile home
159 owner, a mobile home tenant, a mobile home occupant, or a mobile
160 home only on one or more of the grounds provided in this
161 section.

162 (d) Change in use of the land comprising the mobile home
163 park, or the portion thereof from which mobile homes are to be
164 evicted, from mobile home lot rentals to some other use,
165 provided all tenants affected are given at least 6 months'
166 notice of the projected change of use and of their need to
167 secure other accommodations, said notice shall include in a font
168 no smaller than the body of the notice: YOU MAY BE ENTITLED TO
169 COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND,
170 ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION
171 (FMHRC); FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA
172 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION. The park
173 owner may not give a notice of increase in lot rental amount
174 within 90 days before giving notice of a change in use.

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Section 4. Subsection (1) of section 723.06116, Florida Statutes, is amended to read:

723.06116 Payments to the Florida Mobile Home Relocation Corporation.--

(1) If a mobile home owner is required to move due to a change in use of the land comprising a mobile home park as set forth in s. 723.061(1)(d), the mobile home park owner shall, upon such change in use, pay to the Florida Mobile Home Relocation Corporation for deposit in the Florida Mobile Home Relocation Trust Fund \$2,750 for each single-section mobile home and \$3,750 for each multisection mobile home for which a mobile home owner has made application for payment of moving expenses. The mobile home park owner shall make the payments required by this section and by s. 723.0612(7) to the corporation within 30 days after receipt from the corporation of the invoice for payment. Failure to make such payment within the required time period shall result in a late fee being imposed.

(a) If payment is not submitted within 30 days after receipt of the invoice, a 10-percent late fee shall be assessed.

(b) If payment is not submitted within 60 days after receipt of the invoice, a 15-percent late fee shall be assessed.

(c) If payment is not submitted within 90 days after receipt of the invoice, a 20-percent late fee shall be assessed.

(d) Any payment received 120 days or more after receipt of the invoice shall include a 25-percent late fee.

Section 5. Subsection (9) of section 723.0612, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

723.0612 Change in use; relocation expenses; payments by park owner.--

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(9) Any person whose application for funding pursuant to subsection (1) or subsection (7) is approved for payment by the corporation shall be barred from asserting any claim or cause of action under this chapter directly relating to or arising out of the change in use of the mobile home park against the corporation, the park owner, or the park owner's successors in interest. No application for funding pursuant to subsection (1) or subsection (7) shall be approved by the corporation if the applicant has ~~either~~ filed a claim or cause of action, is actively pursuing a claim or cause of action, has settled a claim or cause of action, or has a judgment against the corporation, the park owner, or the park owner's successors in interest under this chapter directly relating to or arising out of the change in use of the mobile home park, unless such claim or cause of action is dismissed with prejudice.

(12) An application to the corporation for compensation under subsection (1) or subsection (7) must be received within 1 year after the expiration of the eviction period as established in the notice required under s. 723.061(1)(d). If the applicant files a claim or cause of action that disqualifies the applicant under subsection (9) and the claim is subsequently dismissed, the application must be received within 6 months following filing of the dismissal with prejudice as required under subsection (9). However, such an applicant must apply within 2 years after the expiration of the eviction period as established in the notice required under s. 723.061(1)(d).

Section 6. Section 723.071, Florida Statutes, is amended to read:

723.071 Sale of mobile home parks; legislative findings.--

(1) The Legislature finds that a right of first refusal to purchase a mobile home park is a property right that should be

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236 negotiated between two parties at arms length and for due
237 consideration. The Legislature further finds that this chapter
238 does not preclude mobile home owners from purchasing a right of
239 first refusal from a willing park owner. The Legislature
240 therefore encourages mobile home owners to organize as a
241 homeowners' association in accordance with this chapter for the
242 purpose of negotiating a right of first refusal with a park
243 owner.

244 (2)~~(1)~~(a) If a mobile home park owner offers a mobile home
245 park for sale, she or he shall notify the officers of the
246 homeowners' association created pursuant to ss. 723.075-723.079
247 of the offer, stating the price and the terms and conditions of
248 sale.

249 (b) The mobile home owners, by and through the association
250 defined in s. 723.075, shall have the right to purchase the
251 park, provided the home owners meet the price and terms and
252 conditions of the mobile home park owner by executing a contract
253 with the park owner within 45 days, unless agreed to otherwise,
254 from the date of mailing of the notice and provided they have
255 complied with ss. 723.075-723.079. If a contract between the
256 park owner and the association is not executed within such 45-
257 day period, then, unless the park owner thereafter elects to
258 offer the park at a price lower than the price specified in her
259 or his notice to the officers of the homeowners' association,
260 the park owner has no further obligations under this subsection,
261 and her or his only obligation shall be as set forth in
262 subsection (3) ~~(2)~~.

263 (c) If the park owner thereafter elects to offer the park
264 at a price lower than the price specified in her or his notice
265 to the home owners, the home owners, by and through the
266 association, will have an additional 10 days to meet the price

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and terms and conditions of the park owner by executing a contract.

~~(3)~~~~(2)~~ If a mobile home park owner receives a bona fide offer to purchase the park that she or he intends to consider or make a counteroffer to, the park owner's only obligation shall be to notify the officers of the homeowners' association that she or he has received an offer and disclose the price and material terms and conditions upon which she or he would consider selling the park and consider any offer made by the home owners, provided the home owners have complied with ss. 723.075-723.079. The park owner shall be under no obligation to sell to the home owners or to interrupt or delay other negotiations and shall be free at any time to execute a contract for the sale of the park to a party or parties other than the home owners or the association.

~~(4)~~~~(3)~~(a) As used in subsections ~~(2)~~ ~~(1)~~ and ~~(3)~~ ~~(2)~~, the term "notify" means the placing of a notice in the United States mail addressed to the officers of the homeowners' association. Each such notice shall be deemed to have been given upon the deposit of the notice in the United States mail.

(b) As used in subsection ~~(2)~~ ~~(1)~~, the term "offer" means any solicitation by the park owner to the general public.

~~(5)~~~~(4)~~ This section does not apply to:

(a) Any sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate.

(b) Any transfer by gift, devise, or operation of law.

(c) Any transfer by a corporation to an affiliate. As used herein, the term "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

(d) Any transfer by a partnership to any of its partners.

(e) Any conveyance of an interest in a mobile home park incidental to the financing of such mobile home park.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering a mobile home park or any deed given in lieu of such foreclosure.

(g) Any sale or transfer between or among joint tenants or tenants in common owning a mobile home park.

(h) Any exchange of a mobile home park for other real property, whether or not such exchange also involves the payment of cash or other boot.

(i) The purchase of a mobile home park by a governmental entity under its powers of eminent domain.

Section 7. Subsection (1) of section 723.072, Florida Statutes, is amended to read:

723.072 Affidavit of compliance with statutory requirements.--

(1) A park owner may at any time record, in the official records of the county where a mobile home park is situated, an affidavit in which the park owner certifies that:

(a) With reference to an offer by him or her for the sale of such park, he or she has complied with the provisions of s. 723.071(2)(1);

(b) With reference to an offer received by him or her for the purchase of such park, or with reference to a counteroffer which he or she intends to make, or has made, for the sale of such park, he or she has complied with the provisions of s. 723.071(3)(2);

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(c) Notwithstanding his or her compliance with the provisions of either subsection (2) ~~(1)~~ or subsection (3) ~~(2)~~ of s. 723.071, no contract has been executed for the sale of such park between himself or herself and the park homeowners' association;

(d) The provisions of subsections (2) ~~(1)~~ and (3) ~~(2)~~ of s. 723.071 are inapplicable to a particular sale or transfer of such park by him or her, and compliance with such subsections is not required; or

(e) A particular sale or transfer of such park is exempted from the provisions of this section and s. 723.071.

Any party acquiring an interest in a mobile home park, and any and all title insurance companies and attorneys preparing, furnishing, or examining any evidence of title, have the absolute right to rely on the truth and accuracy of all statements appearing in such affidavit and are under no obligation to inquire further as to any matter or fact relating to the park owner's compliance with the provisions of s. 723.071.

Section 8. Section 723.083, Florida Statutes, is amended to read:

723.083 Governmental action affecting removal of mobile home owners.--

(1) No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners. The existence of adequate mobile home parks or

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other suitable facilities shall be substantiated in a written document provided by the agency.

(2) The agency of municipal, local, county, or state government considering an application for rezoning or other official action shall make a written good faith estimate of the fiscal costs and benefits of rezoning or official action. The good faith estimate shall include, but need not be limited to, annual increases in property taxes or other revenue sources and any nonrecurring revenues or fees, including, but not limited to, impact fees, permit fees, connection fees, utility charges, or other revenues.

(3) The written reports required under this section shall be made available to the public for inspection and copying at least 10 days prior to the scheduled meeting for consideration of any such rezoning or other official act.

Section 9. The sum of \$50,000,000 is appropriated for fiscal year 2006-2007 from the State Housing Trust Fund to the Florida Homeownership Assistance Program for the purposes of s. 420.5088(7), Florida Statutes, as created by this act. This section shall take effect July 1, 2006.

Section 10. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to affordable housing; creating s.

163.31772, F.S.; providing legislative findings and intent relating to changes in land use affecting mobile home parks; providing definitions; providing requirements for

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391 local governments and community redevelopment agencies
392 regarding specified funding sources to assist certain
393 mobile home owners; requiring local governments to permit
394 and approve rezoning of property for the development of
395 new mobile home parks; providing that a local government
396 or redevelopment agency may enter into a development
397 agreement with the owner of a mobile home park to
398 encourage its continued use for affordable housing;
399 limiting the length of certain development agreements;
400 amending s. 420.5088, F.S.; providing down payment
401 assistance under the Florida Homeownership Assistance
402 Program to certain persons employed as K-12 classroom
403 teachers in the schools in this state; requiring the
404 Florida Housing Finance Corporation to develop eligibility
405 criteria; providing conditions for counties under which
406 funds may be distributed; providing for a lien to be
407 placed on a recipient's property if the recipient does not
408 fulfill a specified commitment; encouraging counties to
409 develop annual county housing plans that emphasize the
410 recruitment and retention of certain classroom teachers;
411 requiring the corporation to encourage and review county
412 housing plans; amending s. 723.061, F.S.; providing notice
413 to homeowners of the Mobile Home Relocation Corporation;
414 amending s. 723.06116, F.S.; providing for late fees if a
415 mobile home park owner does not make payments to the
416 Florida Mobile Home Relocation Corporation within the
417 required time period; amending s. 723.0612, F.S.;
418 prohibiting approval of certain applications for funding
419 submitted by persons who have settled certain claims or
420 causes of action; providing certain time periods within
421 which an application for funding for relocation expenses

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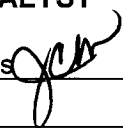

422 must be submitted to the corporation; amending s. 723.071,
423 F.S.; providing legislative findings relating to the sale
424 of mobile home parks; amending s. 723.072, F.S., relating
425 to an affidavit of compliance by an owner of a mobile home
426 park; conforming cross-references; amending s. 723.083,
427 F.S.; requiring an agency of municipal, local, county, or
428 state government to provide a report that substantiates
429 the existence of adequate mobile home parks before
430 approving the removal or relocation of a park; requiring a
431 written estimate of fiscal benefits; requiring certain
432 reports to be made available to the public within a
433 specified time period; providing an appropriation;
434 providing effective dates.
435

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 867
SPONSOR(S): Gottlieb
TIED BILLS:

Impact Of Slot Machine Gaming

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	_____	Morris 	Liepshutz 
2) <u>State Administration Appropriations Committee</u>	_____	_____	_____
3) <u>Finance & Tax Committee</u>	_____	_____	_____
4) <u>Commerce Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

At the 2004 General Election, voters approved an amendment to the Florida Constitution, Art. X, Sec. 23, which permitted two counties, Broward and Miami-Dade, to hold referenda on whether to permit slot machine gaming in certain pari-mutuel facilities within their respective counties. During the 2005-A Special Session, the Legislature enacted Chapter 2005-362, Laws of Florida, which provided the regulatory framework for implementing this constitutional amendment. Among its provisions the implementing legislation limited the number of machines that may be operated at a qualifying pari-mutuel facility to no more than 1,500 per facility.

This bill would impose an annual impact fee of up to \$1,000 per slot machine approved for operation at each pari-mutuel facility. The fee would be remitted to and disbursed by the Division of Pari-mutuel Wagering to qualifying municipalities to mitigate the impact of slot machine gaming.

The collection of this impact fee could result in the collection of up to \$6,000,000 dollars annually for deposit into the Pari-mutuel Wagering Trust Fund. These are pass-through revenues and will not be retained in the Pari-mutuel Wagering Trust Fund; however, a service charge to General Revenue of \$438,000 would be assessed against the collection. The bill is expected to have an insignificant impact on state revenue expenditures.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government.—The bill requires the Division of Pari-mutuel Wagering to implement rules which establish the amount of the impact fee and the qualifications for disbursement of the revenue to qualifying neighboring municipalities.

Ensure lower taxes.—The bill imposes an annual fee in an amount up to \$1,000 for each slot machine approved for operation in the state.

B. EFFECT OF PROPOSED CHANGES:

Background

At the 2004 General Election, voters approved an amendment to the Florida Constitution that permitted two counties, Broward and Miami-Dade, to hold referenda on whether to permit slot machine gaming in certain pari-mutuel facilities within their respective counties. County-wide referenda were held in both counties on March 8, 2005. The referendum passed in Broward County but was defeated in Miami-Dade County.

During the 2005-A Special Session, the Legislature enacted Chapter 2005-362, Laws of Florida, which provided the regulatory framework for implementing Art. X, Sec. 23. This act was codified as chapter 551, Florida Statutes, and took effect January 4, 2006. The Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation is the regulatory agency charged with oversight of slot machine gaming. The implementing legislation limited the number of machines that may be operated at a pari-mutuel facility to no more than 1,500 per facility.

There are four existing pari-mutuel facilities in Broward County which were in operation during calendar years 2002 and 2003, and appear to qualify for slot machine gaming:

- Dania Jai Alai [the Aragon Group, Inc.] in Dania Beach;
- Gulfstream Park Racing Association, Inc. in Hallandale;
- Mardi Gras Racetrack and Gaming Center, [Hartman and Tyner, Inc.] in Hallandale; and
- Pompano Park Racing [PPI, Inc.] in Pompano Beach.

To assist in defraying the cost of local government impacts, including the effects upon quality of life and community values, costs, and expenses that will be incurred as a result of the pari-mutuel facilities' development and operation of slot machines, Broward County has entered into written agreements with those four pari-mutuel facilities. In addition to payments to the county for county-wide impacts, the agreements provide for payments to the county that will be distributed to the municipalities where the facilities are located. The payment percentages are as follows per facility: 1) For county-wide impacts, 1.5 percent of the first \$250 million in slot machine revenues and 2.0 percent of revenues above \$250 million; and, 2) For the municipalities where the facilities are located, 1.7 percent of the first \$250 million in slot machine revenue and 2.5 percent above \$250 million. Some adjacent communities, for example the City of Hollywood, have expressed a concern that these agreements do not adequately address their concerns and anticipated required expenditures.

Proposed Changes

This bill would impose an annual fee in an amount not to exceed \$1,000 upon each slot machine approved for use at an eligible pari-mutuel facility that is within one mile of a neighboring municipality. For purposes of this legislation, the term "neighboring municipality" means a municipality that does not have an eligible facility but is adjacent to an eligible facility and will have public safety, police, and fire

and rescue impacts that are demonstrated by significant increased aid calls to affected municipalities that are not currently funded.

The bill requires the fees to be submitted to the Division by February 1st of each year based on the number of slot machines approved for operation by the Division on January 1. Fees are to be deposited into the Pari-mutuel Wagering Trust Fund and are to be distributed to neighboring municipalities that have provided evidence to the Division of significant local impacts from slot machine operations during the prior year.

The Division is authorized to establish the amount of the fee and the criteria for determining a significant local impact by rule; however, those criteria must include increased crime incident reports, fire and rescue and emergency medical incident reports, and traffic flow and infrastructure impacts.

C. SECTION DIRECTORY:

Section 1. Creates a new s. 551.1062, F.S., to provide an annual fee on each slot machine approved for use at an eligible facility to be used by a neighboring municipality to offset adverse public health, safety, and welfare and public works and traffic impacts as a result of slot machine gaming at the eligible facility.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The provisions of this bill allow the collection of up to \$6,000,000 dollars annually for deposit into the Pari-mutuel Wagering Trust Fund for subsequent disbursement to qualifying neighboring municipalities. These are pass-through revenues and will not be retained in the Trust Fund; however, a service charge to General Revenue of \$438,000 will be assessed against the collection.

2. Expenditures:

The Division of Pari-mutuel Wagering will incur costs associated with rule-making and receipt and disbursement of revenue. The Division anticipates these costs to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is no statewide impact. At the present time there are four municipalities in Broward County that fall within the definition of a "neighboring municipality" under the criteria established in this bill. Those municipalities would be able to receive a pro rata share of revenue from the impact fee assessed each slot machine in Broward County upon a showing of significant local impact from slot machine gaming operations. Those four municipalities include: Aventura, Ft. Lauderdale, Hollywood, and Oakland Park.

2. Expenditures:

There is no statewide impact. The four qualifying "neighboring municipalities" will incur costs associated with compiling the various reports and evidence necessary to support a disbursement of revenue.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires each eligible pari-mutuel facility to pay an annual fee in an amount established by the Division, but not to exceed \$1,000, per slot machine approved for use at their facility. Each facility is

authorized to offer up to 1,500 slot machines; therefore, each facility could potentially be assessed an additional \$1.5 Million annually.

Residents and visitors to qualifying municipalities could benefit from increased funding of public safety, police, and fire and rescue efforts and mitigation of various public works and traffic impacts occurring as a direct result of slot machine gaming operations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Paragraph (b) of Article X, Section 23, Florida Constitution, reads as follows:

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. [Emphasis supplied]

Impact fees are generally imposed to advance limited objectives within a community, such as reducing traffic or improving education. In this respect they differ from taxes which are imposed to meet the general needs of the government. Courts treat impact fees like regulations and do not subject them to the constitutional restrictions placed on taxes. However, if the fee charged lacks a sufficient connection with the government's objective, or if potential revenues would exceed the cost of needed improvements, courts may treat the impact fee as a tax. Courts require a nexus between the imposition of an impact fee, the impact which the fee seeks to offset, and the benefit derived.¹

B. RULE-MAKING AUTHORITY:

The bill requires the Division of Pari-mutuel Wagering to implement rules establishing the amount of the impact fee and the criteria by which disbursements may be made to qualifying municipalities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Pari-mutuel Wagering contends the assessment of local impacts required by this legislation is beyond their scope of expertise and that these functions might more appropriately be placed in agencies that have either direct oversight or expertise in those areas.

V. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹ *Federal & State Constitutional Law: A Guide for Legislative Staff*, Committee on Judiciary, Florida House of Representatives, 2003.

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1 A bill to be entitled

2 An act relating to impact of slot machine gaming; creating
3 s. 551.1062, F.S.; requiring an annual fee to be
4 established by the Division of Pari-mutuel Wagering and
5 collected from slot machine gaming facilities to mitigate
6 the impact of slot machine gaming on neighboring
7 municipalities; defining "neighboring municipality";
8 providing for the use of the revenue collected; providing
9 procedures for collection and distribution by the division
10 to neighboring municipalities; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 551.1062, Florida Statutes, is created
16 to read:

17 551.1062 Mitigation of impact; fee.--An annual fee not to
18 exceed \$1,000, established by the division, is imposed upon each
19 slot machine approved for use at any eligible facility that is
20 within 1 mile of any neighboring municipality. As used in this
21 section, the term "neighboring municipality" means a
22 municipality that does not have an eligible facility but is
23 adjacent to an eligible facility and will have public safety,
24 police, and fire and rescue impacts that are demonstrated by
25 significant increased aid calls to affected municipalities that
26 are not currently funded. Revenue from the fees imposed by this
27 section must be used by the neighboring municipality to fund the
28 adverse public health, safety, and welfare and public works and

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29 traffic impacts that will be caused by the implementation of s.
30 23, Art. X of the State Constitution and that will occur as a
31 direct result of slot machine operations. Each year, the fee
32 shall be remitted to the division to be deposited into the Pari-
33 mutuel Wagering Trust Fund and distributed to any neighboring
34 municipality that has provided evidence to the division of
35 significant local impacts from slot machine operations during
36 the prior year. Criteria for significant local impacts under
37 this section shall be established by the division by rule
38 pursuant to ss. 120.536(1) and 120.54 but shall include
39 increased crime incident reports, fire and rescue and emergency
40 medical incident reports, and traffic flow and infrastructure
41 impacts. The fee must be remitted by February 1 of each year
42 based on the number of slot machines approved for operation by
43 the division as of January 1. The funds shall be designated by
44 the division on a pro rata basis to the affected neighboring
45 municipalities.

46 Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 by Zapata

Bill No. **HB 867**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Business Regulation
Representative(s) Zapata offered the following:

Amendment

Remove line(s) 17-26 and insert:

551.1062 Mitigation of impact; fee.—An annual fee not to exceed \$1,000 established by the division, is imposed upon each slot machine approved for use at any eligible facility that is within one mile of any neighboring municipality or two or more eligible facilities that are each within two miles of any neighboring municipality. As used in this section, the term "neighboring municipality" means a municipality that does not have an eligible facility but is adjacent to an eligible facility and will have public safety, police, and fire and rescue impacts that are demonstrated by significant increased aid calls to affected municipalities that are not currently funded and is located in a county where a majority of voters in a countywide referendum have approved the operation of slot machines at the eligible facility. Revenue from the fees imposed by this

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